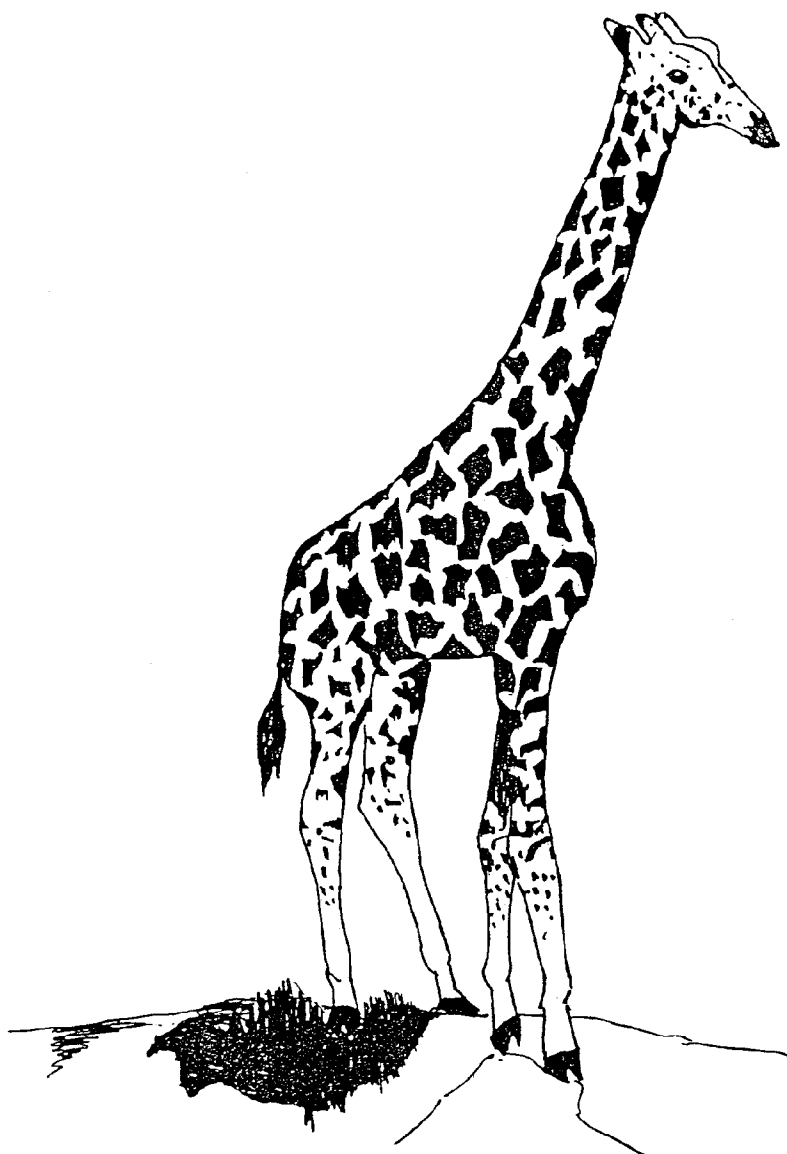

TEXAS REGISTER

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Artist: *Vuong Loi*

8th grade

Haltom Middle School, Birdville ISD

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Office of the Attorney General

Open Records Decision

ORD-0647(ORQ-4) Request from Rick Perry, Commissioner, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, concerning whether attorney work product regarding civil litigation may be excepted from disclosure under Government Code, Chapter 552, once the litigation for which the requested information was created has concluded.

Summary of Decision During the pendency of civil litigation, a governmental body may withhold attorney work product under sections 552.103 or 552.111 of the Government Code. Once civil litigation has concluded, attorney work product may be withheld under section 552.111 if it was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories.

TRD-9613625

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 20. Cotton Pest Control

Subchapter C. Stalk Destruction Program

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction date for Pest Management Zone 1.

The department is acting on behalf of cotton farmers in Brooks, Cameron, Hidalgo, Jim Hogg, Starr, Willacy, Zapata and the southern part of Kenedy County encompassing the area below an east-west line through Katherine and Armstrong, Texas.

The cotton destruction deadline for Zone 1 is September 1. A prior emergency amendment as published in the September 10, 1996, issue of the *Texas Register* (21 TexReg 8639), extended the deadline for these counties to September 15. The cotton destruction deadline will now be extended through September 30. The department believes that changing the cotton destruction date is both necessary and appropriate.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for all counties in Pest Management Zone 1. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from cotton destruction by the September 1 deadline. A failure to act to extend the cotton destruction deadline could create a significant loss to Texas cotton producers and the state's economy.

The department believes that extending the cotton destruction deadline in the counties in Pest Management Zone 1 as requested will not result in a significant increase in pest populations in the zone.

The emergency amendment to §20.22(a) will extend the date for cotton destruction through September 30 of this year in Brooks, Cameron, Hidalgo, Jim Hogg, Starr, Willacy, Zapata and the southern part of Kenedy County encompassing the area below an east-west line through Katherine and Armstrong, Texas.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas

Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:

Figure: 4 TAC §20.22(a)

(b)-(c) (No Change.)

Issued in Austin, Texas, on September 13, 1996.

TRD-9613498

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 16, 1996

Expiration date: October 6, 1996

For further information, please call: (512) 463-7583



Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter R. Management of Whole Used or Scrap Tires

30 TAC §330.860

The Texas Natural Resource Conservation Commission is renewing the effectiveness of the emergency adoption of new §330.860, for a 60-day period. The text of new §330.860 was originally published in the July 12, 1996, issue of the *Texas Register* (21 TexReg 6299).

Issued in Austin, Texas, on September 11, 1996.

TRD-9613315

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: October 24, 1996

Expiration date: December 23, 1996

For further information, please call: (512) 239-1970



PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter B. Horse Racetracks

16 TAC §309.199

The Texas Racing Commission proposes an amendment to §309.199, concerning the horsemen's bookkeeper. The amendment was presented to the commission as a rulemaking petition by the Texas Horsemen's Partnership, LLP, the officially recognized horsemen's organization in this state. According to the petition, the amendment will establish a procedure to govern the disposition of funds in horsemen's purse accounts if an association terminates a race meet prematurely before completing the race dates assigned by the commission for the race meet.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined, based on the petition, that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined, based on the petition, that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the racing industry will be encouraged by making purse money available for use for which it was intended - an incentive for live racing and a reward to successful competitors. There will be positive fiscal implications for the horse owners and trainers who receive the purse money; the exact amount of the gain cannot be determined at this time because it will depend on the amount in the purse account to be transferred or paid retroactively. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering

the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.199. *Horsemen's Bookkeeper.*

(a)-(e) (No change.)

(f) All moneys allocated to the horsemen's purse account arising from either live race wagering or simulcast wagering are hereby designated as trust funds for the benefit of horsemen running at the association's track. The association is hereby deemed to be the custodial trustee of the horsemen's purse fund subject to this subsection.

(1)-(6) (No change.)

(7) **If an association ceases a live racing meet prior to completion of racing days assigned by the commission, funds in and due to the purse account shall be distributed as follows:**

(A) **first, payment of accrued but unpaid purses;**

(B) **second, retroactive prorata payments to the horsemen if provided by contract; and**

(C) **third, subject to prior approval of the officially recognized horsemen's organization, transfer within 120 days of cessation of racing of the balance in the purse account or due the purse account to a purse account in one or more other associations.**

(g)-(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613305

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 833-6699

◆ ◆ ◆
16 TAC §309.200

The Texas Racing Commission proposes an amendment to §309.200, concerning stakes and other prepayment races. The amendment modifies the requirements for submitting information on stakes and prepayment races to the commission.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the commission will remain appropriately informed of the stakes and prepayment races being conducted at Texas pari-mutuel racetracks without overly burdening the sponsors and coordinators of those races. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.200. Stakes and other Prepayment Races.

(a) An association shall file with the commission, for approval, a copy of the race conditions and the nomination blank for all stakes or other prepayment races [at least 30 days] before distributing the conditions to the public.

(b)-(e) (No change.)

(f) Not later than **five business** [15] days after **receiving a request from** [the purse from the race is released for payment by] the commission, the association shall provide to the commission the final report for the escrow account. The final report must include all information required in subsection (e) of this section and a certification by the association that the purse has been distributed. The certification must state how the purse was distributed to each purse winner, including the address to which a check was mailed or the date on which winnings were deposited in the appropriate horsemen's account.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613306

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 833-6699

◆ ◆ ◆
16 TAC §309.201

The Texas Racing Commission proposes an amendment to §309.201, concerning equitable stabling. The amendment clarifies the requirements for allocating stalls among various breeds of race horses during mixed meets.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that all breeds of race horse recognized in Texas will have access to pari-mutuel racetracks. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §9.06, which requires on-track stalls to be provided to the various breeds participating in a mixed race meet.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.201. Equitable Stabling.

If an association conducts a race meeting for more than one breed of horse at one racetrack, the **racetrack shall allocate the** [proportion of] stalls at the racetrack **equitably among the breeds as determined by the commission** [that are allocated for each breed shall be in direct proportion to the number of races conducted for each breed during the race meeting].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613307

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 833-6699

◆ ◆ ◆
Chapter 321. Pari-Mutuel Wagering

Subchapter B. Distribution of Pari-Mutuel Pools

16 TAC §321.110, §321.116

The Texas Racing Commission proposes an amendment to §321.110 and §321.116, concerning the trifecta and superfecta pari-mutuel pools. The amendments clarify the requirements for coupled entries and mutuel fields to participate in a race with trifecta or superfecta wagering.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Carter also has determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the sections will be that pari-mutuel wagering will be strictly regulated and conducted with the utmost integrity. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§321.110. *Trifecta.*

(a)-(b) (No change.)

(c) A coupled entry or mutuel field may not start in a horse race with trifecta wagering unless [the race is a stakes race with a purse of at least \$100,000 and] there are seven or more wagering interests.

(d)-(n) (No change.)

§321.116. *Superfecta.*

(a)-(h) (No change.)

(i) A coupled entry or mutuel field may not start in a horse race with superfecta wagering unless [the race is a stakes race with a purse of at least \$100,000 and] there are **eight** [seven] or more wagering interests.

(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613308

Paula Cochran Carter
General Counsel

Texas Racing Commission

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 833-6699

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter R. Management of Whole Used or Scrap Tires

30 TAC §330.860

The Texas Natural Resource Conservation Commission (commission) proposes new §330.860 concerning the Special Authorization Priority Enforcement List. This proposed rule, with a few minor differences, was adopted on an emergency basis by the commission and published in the July 12, 1996, issue of the *Texas Register* (21 TexReg 6299) as necessary to prevent imminent peril to the public health, safety or welfare. The emergency rule was originally scheduled to expire on October 24, 1996, but the commission extended the rule for 60 days during its September 11, 1996 meeting and it will now expire on December 23, 1996. The commission has received numerous complaints from state, city, and county health officials regarding the problems associated with whole tires piling up at generator locations primarily in the West Texas area. The concerns include fire, the creation of breeding grounds for mosquitoes, snakes and rodents, human health problems, as well as traffic safety due to tires piling up alongside roadways. Because generator locations are usually located in large population centers, the threat of fire is of particular concern since whole tire piles are easily ignited. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

Specifically, the new section would establish the Special Authorization Priority Enforcement List (SAPEL) which would consist of waste tires generated in specially-designated counties or regions which are not receiving adequate collection service and which, as set forth in the Texas Health & Safety Code, §361.476, pose a threat to public health and safety, or the environment. Additionally, the rules establish the framework for a contracting mechanism whereby the agency may contract with collection entities designated by the executive director for the collection and transportation of SAPEL tires.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years this section as proposed is in effect there will be fiscal implications as a result of administration and enforcement of the section. The effect on state government will be an increase in costs associated with the contractual agreements authorized under this rule for the collection, transportation, storage, and possible disposition of tires and tire pieces. These costs include the development and publication of advertisements for bid, evaluation of bids, award of contracts, contract monitoring, and payment processing. While these are additional costs, they are mitigated by the reductions in cost related to the oversight of tire processing and end use reimbursement that is not occurring at levels

sufficient to address the amounts of tires being generated in certain regions of the state. In addition, this rule as proposed will reduce certain costs associated with the commission's response to the developing problems of waste tire collection and transportation in these regions. The actual net cost to the agency cannot be determined; however, no significant fiscal implications are anticipated and any costs incurred will be limited by the amounts from the waste tire recycling fund allocated by law to the commission's administration of the waste tire program. There are no costs anticipated for local governments. Local governments may benefit indirectly through reduced demands on health, law enforcement, and solid waste management resources as a result of improving the collection and management of waste tires and reducing unauthorized storage and illegal disposal.

Mr. Minick also has determined that for each year of the first five years this section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be improvement in the collection of waste tires, reductions in the number of waste tires stored at generator locations or in illegal dumps, enhanced incentives for the collection, transportation, and processing of waste tires being generated within the state, and reductions in the risk to public health and safety posed by long-term storage of waste tires, including the risks associated with fire and disease vectors. There are no economic costs anticipated for any person, including any small business, required to comply with the section as proposed. The proposed rule contains no mandatory requirements and participation under this section is an election at the discretion of eligible entities. Implementation of this section will have direct benefits for waste tire processors, storage facilities, transporters, and generators by stimulating collection of waste tires in areas of the state where collection has been inadequate because of the distance to processing facilities.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to provide a framework that will allow the commission to prevent imminent peril to the public health, safety and welfare by contracting with waste tire collection entities for the collection and transportation of scrap tires and tire pieces that are accumulating in certain West Texas counties and regions. The commission has received numerous complaints from state, city, and county health officials regarding the problems associated with whole tires piling up at generator locations. Tire shreds have piled up at storage sites and scrap tires are not being collected from generator locations, raising the threat of fires, creation of breeding grounds for mosquitoes, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. The rule will substantially advance this specific purpose by establishing procedures for designating scrap tires and tire pieces as SAPEL in counties or regions not receiving adequate tire collection and which pose a threat to human health, safety, and welfare. Under statutory authority, the commission may contract for collection of the tires. Promulgation and enforcement of this rule will not affect, nor create a burden on, private real property because the rule pertains only to new procedures to facilitate the collection of accumulated scrap tires and tire pieces so as to eliminate

the threat to public health, safety, and welfare, as well as the environment. The rule may be considered less stringent than the existing rules to the extent that the agency will be reducing the burden on the regulated community by supplementing its efforts in carrying out a currently-uneconomical task. Except for the exemptions which are specified in Senate Bill 14 and addressed above, there are no other identifiable exemptions that would apply to this rulemaking.

Written comments may be submitted to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96146-330-WS. Comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information please contact Hector Mendieta, Waste Policy and Regulations Division, at (512) 239-6694 or Mark Vickery, Waste Tire Recycling Fund Program, at (512) 239-6663.

The new section is proposed under the authority of the Health & Safety Code §361.011 which charges the commission with the responsibility of managing solid waste, coordinating municipal solid waste activities, controlling all aspects of the management of municipal solid waste, and which grants the commission with the powers necessary or convenient to carry out those responsibilities; §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code; §5.229, Texas Water Code, which gives the executive director the authority to enter into contracts on behalf of the commission; and Health & Safety Code §§361.475, 361.476 and 361.477 and §361.484 which give the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health & Safety Code, relating to the Waste Tire Recycling Program.

The new section implements the Texas Health and Safety Code §§361.013, 361.476 and 361.477.

§330.860. *Special Authorization Priority Enforcement List.*

(a) Special Authorization Priority Enforcement List.

(1) General. The Special Authorization Priority Enforcement List (SAPEL) consists of waste tires generated in specially designated counties or regions which are identified by the executive director as areas which are not receiving adequate collection service and which pose a threat to public health and safety or the environment.

(A) The executive director may designate collection entities as necessary to ensure continuous and adequate collection of SAPEL tires.

(B) The executive director may impose certain conditions on the SAPEL tire collection activities of designated collection entities as necessary to minimize disruption of activities at the generator locations and any other actions consistent with this subsection that are necessary to carry out the purposes of this section.

(C) Implementation of this section is not intended to impair or reduce existing generator collection in areas of the state containing SAPEL tires if adequate collection service is currently provided.

(D) The requirements of §330.878 of this title (relating to Special Authorization Tires) do not apply to SAPEL tires.

(2) Relationship to Priority Enforcement List (PEL). The SAPEL shall be a component of the PEL and the number of tires on sites listed on the SAPEL shall be included in determining whether the total number of tires at sites contained on the PEL exceeds 2.5 million. Unless otherwise provided by the executive director, the requirements in §§330.861- 330.870 of this title (relating to Priority Enforcement List; Potentially Responsible Party; Priority Enforcement List; Ranking of Illegal Waste Tire Sites; Assignment of PEL Sites; Pre PEL Clean-up Responsibilities; Site Clean-up Agreement; Approval to Collect and Process Tires from PEL Sites; Post PEL Clean-up Responsibilities; and Authority of Commission Personnel) do not apply to the SAPEL or SAPEL process.

(3) Generator responsibility. A generator desiring to have tires located at his site listed on the SAPEL shall cooperate fully with executive director instructions. A generator shall make his site available for access by designated collection entities for SAPEL tire collection. Failure to comply may result in tires at that site being ineligible for listing on the SAPEL.

(b) SAPEL contract.

(1) General.

(A) The executive director may contract with designated collection entities as necessary to ensure adequate collection of SAPEL tires.

(B) SAPEL tires and tire pieces are eligible for reimbursement as long as all applicable requirements relating to reimbursement and end use set forth in this subchapter are satisfied. Any available reimbursement shall be reduced by the amount of transportation costs paid on a tire under a contract issued under this section.

(2) As part of the SAPEL contract, a designated collection entity may be required to comply with the following:

(A) for entities currently providing scrap tire collection, proof that their participation in the SAPEL contract process shall not impair or reduce their existing generator collection routes;

(B) attempt to the maximum extent possible to deliver SAPEL tires to an end user;

(C) special manifesting and reporting requirements;

(D) provide proof of ability to ensure adequate collection service for sites containing SAPEL tires; and

(E) any other requirements as necessary which are consistent with this section, and which will facilitate cleanup of SAPEL tires and protect human health, safety and the environment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, September 11, 1996.

TRD-9613314

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 20, 1996

For further information, please call: (512) 239-1970

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

The Texas Parks and Wildlife Department proposes repeal of §§57.251-57.260, and new §§57.251-57.257, concerning Introduction of Fish, Shellfish and Aquatic Plants. This action represents a streamlining and recodification of current regulations concerning the placement of certain organisms in public water as part of the Parks and Wildlife Commission regulations sunset process.

New §57.251 provides definitions necessary for implementation of following sections. Proposed new §57.252 provides reference to prohibited actions related to placing fish, shellfish or aquatic plants into public water. New §57.253 provides permit exemptions for individuals introducing native non-game fish into public waters or fishing with goldfish, common carp, native shrimp, native crabs or native crawfish. Proposed new §57.254 sets permit application requirements and period of validity for permits. New §57.255 lists provisions under which a permit for introduction of fish, shellfish or aquatic plants will be denied and new §57.256 provides an appeal mechanism for individuals whose requests for a permit is denied. Proposed new §57.257 references penalties for violation of these provisions.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rules as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rules as proposed is in effect the public benefit anticipated as a result of the repeal and new rules as proposed will be streamlining of existing regulations removal of redundant sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal of rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code §2001.022, as this agency has determined that the repeals and new rules as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Ken Kurzawski, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591 or 1-800-792-1112, Ext. 4591.

Introduction of Fish, Shellfish and Aquatic Plants

31 TAC §§57.251-57.260

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Parks and Wildlife Code, §12.015 and §66.015, which provides authority for the Parks and Wildlife Commission to regulate placement of fish, shellfish and aquatic plants into the public waters of Texas.

The proposed repeal of rules affect Parks and Wildlife Code, §12.015 and §66.015.

§57.251. *Definitions.*

§57.252. *Prohibited Acts.*

§57.253. *Permit Exemptions.*

§57.254. *Permit Application.*

§57.255. *Verification of Compliance.*

§57.256. *Period of Validity.*

§57.257. *Permit Denial*

§57.258. *Appeal.*

§57.259. *Statewide Permit.*

§57.260. *Penalties.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613359

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 25, 1996

For further information, please call: 1 (800) 792-1112, Ext. 4642 or (512) 389-4642



31 TAC §§57.251-57.257

The new rules are proposed under Parks and Wildlife Code, §12.015 and §66.015, which provides authority for the Parks and Wildlife Commission to regulate placement of fish, shellfish and aquatic plants into the public waters of Texas.

The proposed new rules affect Parks and Wildlife Code §12.015 and §66.015.

§57.251. *Definitions.*

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Aquatic plant—All plants whose seeds germinate in either the water phase or the substrate of a body of water and which must spend part of the life cycle in water (Reid, G.K., and R.O. Wood 1976, Ecology of Inland Waters and Estuaries).

Department—The Texas Parks and Wildlife Department or any authorized employee thereof.

Fishing—Taking or attempting to take aquatic life by any means.

Native fish—All fish and shellfish documented by the department to live, spawn, or reproduce in Texas public waters and whose first

documented occurrence in Texas public waters was not the result of direct or indirect importation by man.

Nongame fish—All fish included in the definition for nongame fish in §65.3 of this title (relating to Statewide Hunting and Fishing Definitions).

Public water—Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination (Parks and Wildlife Code, §66.015(a)).

Shellfish—Aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, and crabs of all varieties.

§57.252. *Prohibited Acts.*

Except as provided in these sections it shall be an offense if:

(1) any person places fish, shellfish, or aquatic plants into public water without a valid permit issued by the department authorizing that activity;

(2) a person holding a permit under this section fails to notify the department at least three days prior to the placing of any fish, shellfish, or aquatic plant into public water; or

(3) any fish, shellfish, or aquatic plant any person possesses or has placed in nonpublic water escapes into public water and that person does not hold a valid permit issued by the department authorizing that activity.

§57.253. *Permit Exemptions.*

(a) A permit is not required for any person, while fishing, to place goldfish (*Carassius auratus*), common carp (*Cyprinus carpio*), native shrimp, crabs, crawfish and nongame fish into public waters.

(b) An employee of the department acting at the direction of the executive director is exempt from the permit requirements specified by these sections.

§57.254. *Permit Application; Validity.*

(a) An applicant for a permit to place fish, shellfish, or aquatic plants, directly or indirectly, into the public waters of this state shall submit a notarized application to the department on a form supplied by the department.

(b) The application must be received by the department at least 30 days before the proposed introduction.

(c) A permit issued under this section is valid for 60 days from the date of issuance or until the permitted introduction has been completed, whichever comes first.

§57.255. *Permit Denial.*

A permit to introduce fish, shellfish, or aquatic plants will be denied if:

(1) a proposed fish stocking does not meet departmental stocking policy (§§52.101-52.401); or

(2) the fish, shellfish, or aquatic plant introduction is not consistent with management objectives of the department.

§57.256. *Appeal.*

An opportunity for hearing shall be provided to the applicant for any denial of a permit or issuance of a permit where the terms of issuance are different from those requested by the applicant.

(1) Request for hearings for appeal must be made in writing no more than 30 days from receipt of the denial notification.

(2) All hearings shall be conducted in accordance with the rules of practice and procedure of the Texas Parks and Wildlife Department and the Administrative Procedure and Texas Register Act.

§57.257. *Penalties.*

A person who violates these rules commits an offense punishable by the penalty prescribed by the Parks and Wildlife Code, §66.012.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613360

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 25, 1996

For further information, please call: 1 (800) 792-1112, Ext. 4642 or (512) 389-4642



Chapter 59. Parks

Park Entrance and Park User Fees

31 TAC §59.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes repeal of §59.6, concerning Conservation Permit Fee. This action represents repeal of redundant sections of the Texas Administrative Code. Permits are covered in existing rules in §53.2, concerning Combination Hunting and Fishing Licenses, Packages and Conservation Permits, and §59.2(b), concerning Park Entrance and Use Fees.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal of rules as proposed is in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal of rules as proposed is in effect the public benefit anticipated as a result of the repeal as proposed will be removal of redundant sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal of rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has deter-

mined that the repealed rules as proposed will not impact local economies.

Comments on the proposed repeal of rules may be submitted to Paul Israel, CFO Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4420 or 1-800-792-1112, Ext. 4420.

The repeal is proposed under Parks and Wildlife Code Chapter 43, Subchapter O, §43.522.

The proposed repeal of rules affects Parks and Wildlife Code §43.522.

§59.6. *Conservation Permit Fee.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613369

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 25, 1996

For further information, please call: 1 (800) 792-1112, Ext. 4642 or (512) 389-4642



Park Planning and Development Projects

31 TAC §§59.31-59.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes the repeals to §59.31-59.34, concerning Park Planning and Development Projects. This action represents the repeal of the redundant sections of the Texas Administrative Code as part of the Parks and Wildlife Commission regulations sunset process.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal of rules as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal of rules as proposed are in effect the public benefit anticipated as a result of the repeal as proposed will be removal of redundant sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal of rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the repealed rules as proposed will not impact local economies.

Comments on the proposed repeal of rules may be submitted to Jim Riggs, State Parks Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4904 or 1-800-792-1112, Ext. 4904.

The repeals are proposed under Parks and Wildlife Code, §13.001 and §§13.301-13.313.

The proposed repeal of rules affects Parks and Wildlife Code, §13.001 and §§13.301-13.313.

§59.31. *Guidelines.*

§59.32. *Initial Procedures.*

§59.33. *Staff Planning Process.*

§59.34. *Design Development by Private Firm and Construction Phase.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613370

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 25, 1996

For further information, please call: 1 (800) 792-1112, Ext. 4642 or (512) 389-4642



Procedures for Selecting a Design Professional for Major Park Projects

31 TAC §§59.121-59.122

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes the repeals to §§59.121-59.122, concerning Procedures for Selecting a Design Professional for Major Park Projects. This action represents repeal of redundant sections of the Texas Administrative Code as part of the Parks and Wildlife Commission regulations sunset process.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal of rules as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal of rules as proposed are in effect the public benefit anticipated as a result of the repeal as proposed will be removal of redundant sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal of rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Adminis-

trative Procedure Act, Government Code, §2001.022, as this agency has determined that the repealed rules as proposed will not impact local economies.

Comments on the proposed repeal of rules may be submitted to Jim Riggs, State Parks Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4904 or 1-800-792-1112, Ext. 4904.

The repeals are proposed under Parks and Wildlife Code, §13.001.

The proposed repeal of rules affects Parks and Wildlife Code, §13.001.

§59.121. *Selection Committee.*

§59.122. *Selection Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613371

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 25, 1996

For further information, please call: 1 (800) 792-1112, Ext. 4642 or (512) 389-4642



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales Tax

34 TAC §§3.78, 3.91, 3.92

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.78, §3.91, and §3.92, concerning motor vehicles rented in Texas, bad debts, and direct payment qualifications and procedures. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.78, §3.91, and §3.92, will be included in the new §3.78, concerning motor vehicle rentals.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Reissig also has determined that for each year of the first five years the sections are in effect there will be no cost or benefit to the public from the repeal of these sections. The

repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Tax Code, §111.002.

§3.78. *Motor Vehicles Rented in Texas.*

§3.91. *Bad Debts.*

§3.92. *Direct Payment Qualifications and Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 13, 1996.

TRD-9613429

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 463-4062

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34 TAC §3.78

The Comptroller of Public Accounts proposes new §3.78, concerning motor vehicle rentals. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.78 is being proposed for repeal. The new section consolidates the substance of the current §3.78, concerning motor vehicles rented in Texas, with the substance of §3.91, concerning bad debts, and §3.92, concerning direct payment qualifications and procedures. Language is also added to the definition of gross rental receipts in subsection (a)(1) to address amendments to the Certificate of Title Act by the House Bill 2151, 74th Legislature, 1995, allowing a motor vehicle rental company to make a separate charge for title fees, registration fees, and property taxes.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §§152.001, 152.003, 152.026, and 152.045.

§3.78. *Motor Vehicle Rentals.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Gross rental receipts - Any amount of money or the value of property received by or due the owner of a motor vehicle as consideration for the rental of the vehicle to another including a reimbursement charge for property tax, title fee, and registration fee expenses. Gross rental receipts does not include and tax is not due on:

(A) a separately stated fee or charge for insurance;

(B) an assessment for damage to the vehicle which occurred during a rental agreement period;

(C) separately stated receipts for motor fuel sold by the owner of the vehicle;

(D) discounts;

(E) any amount of gross rental receipts tax collected by or due the owner of the vehicle.

(2) Owner - The person named in the Texas certificate of title of a motor vehicle as the owner of the vehicle, or a person having exclusive use of a motor vehicle under a rental agreement and who holds the motor vehicle for re-rental.

(3) Rental or renting means:

(A) an agreement whereby the owner of a motor vehicle gives exclusive use of the vehicle to another for a consideration and for a period of time not to exceed 180 days under any one agreement;

(B) an agreement whereby an original manufacturer of motor vehicles gives exclusive use of a motor vehicle to another for a consideration; or

(C) an agreement whereby the owner of a motor vehicle gives exclusive use of the vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement.

(4) Rented in Texas - A motor vehicle is "rented in Texas" when the vehicle is delivered to the renter in Texas regardless of the location of the rental agency. A motor vehicle is not "rented in Texas" if the vehicle is delivered to the renter outside the State of Texas or to a common carrier for transportation to the renter outside of Texas.

(5) Retailer - Any owner of a motor vehicle who is responsible for collecting and reporting motor vehicle gross rental receipts tax pursuant to the Tax Code, §152.045.

(b) Application of tax.

(1) When a motor vehicle is rented in Texas, all of the rental receipts are subject to the Texas motor vehicle gross rental receipts tax. If a person who rents a motor vehicle in Texas subsequently moves the vehicle to another state and pays a legitimately imposed rental receipts tax or sales and use tax, he may claim a credit in the amount of the tax paid to the other state against any Texas motor vehicle gross rental receipts tax due after payment of the tax to the other state.

(2) If a motor vehicle is not rented in Texas, the gross rental receipts from the rental are not subject to the Texas motor vehicle gross rental receipts tax.

(c) Bad debt.

(1) Tax not due on bad debt.

(A) A retailer may take a deduction for rental receipts that are determined to be uncollectible during the same report period in which the rental was made if:

(i) the uncollectible amount of gross rental receipts is entered on the retailer's books as a bad debt; and

(ii) the bad debt will be claimed as a deduction for federal income tax purposes.

(B) A retailer who has previously paid motor vehicle gross rental receipts tax may take a deduction or seek a credit for the tax paid on the gross rental receipts that are determined uncollectible if the uncollectible amount is entered on the retailer's books as a bad debt and claimed as a deduction for federal income tax purposes.

(i) The deduction must be taken or credit claimed for the period in which the amount was determined uncollectible.

(ii) If the uncollectible amount includes taxable and nontaxable receipts as defined in subsection (a) of this section, a deduction or credit may be claimed for only the amount that represents taxable receipts.

(iii) To determine the amount that represents taxable receipts, all payments and credits may be applied proportionally against the fees the customer agreed to pay.

(C) If a retailer subsequently collects all or any part of a taxable amount previously determined uncollectible and charged off for income tax purposes as a bad debt, the taxable amount collected, as defined in paragraph (B)(iii) of this subsection, must be included in gross rental receipts on the return filed after such collection and the proper amount of tax must be remitted.

(2) Records required. To support a claim for a bad debt deduction or credit, a retailer must maintain complete records which document:

(A) the vehicle identification number, the year, and the model of the vehicle or vehicles involved;

(B) the date of the rental for which a deduction or credit is claimed;

(C) the name and address of the customer;

(D) the amount the customer agreed to pay;

(E) any amount on which the retailer has already paid tax;

(F) any payment or other credit applied to the account;

(G) evidence that the amount determined to be uncollectible has been legally charged off as a bad debt for federal income tax purposes.

(3) Credit. Credit does not qualify as a bad debt. When a retailer extends credit to a customer making a rental, the amount of credit so extended may not be labeled as a bad debt merely for the purpose of delaying the payment of tax.

(d) Direct payment qualifications and procedures.

(1) A holder of a motor vehicle rental tax direct payment permit may give an exemption certificate in lieu of paying the taxes for motor vehicles which are rented by the permit holder solely for its own use. A limited sales, excise, and use tax direct payment blanket exemption certificate may not be issued for the rental of motor vehicles.

(2) An applicant for a motor vehicle rental tax direct payment permit must comply with the following:

(A) The applicant must be a responsible person paying annually at least \$800,000 in taxable motor vehicle rentals.

(i) The \$800,000 does not include any rentals paid by the applicant for vehicles that are to be re-rented.

(ii) The \$800,000 does not include any payments made on motor vehicle purchases or leases. An application for a permit must be accompanied by a statement that the applicant meets all the conditions of this section, along with sufficient records to support the statement.

(B) The applicant must be able to establish to the satisfaction of the comptroller that its accounting methods clearly distinguish between rentals of motor vehicles and leases, rental, and purchases of other tangible personal property taxed under the Sales Tax Act. A clear description of the applicant's accounting methods must accompany any application for a permit.

(C) The applicant must agree to accrue and pay the motor vehicle rental tax on a separate return from the taxes imposed by the Sales Tax Act. The applicant must also agree to make the motor vehicle rental tax payments to the state on or before the 20th day of the month following each month in which the motor vehicles are rented. A written agreement to this effect will be furnished by the comptroller; it must be signed and returned along with any application for a motor vehicle rental direct payment permit.

(3) Applicants for a motor vehicle rental direct payment permit should write and request an application from the Comptroller of Public Accounts, Austin, Texas 78774.

(4) Any person whose motor vehicle rental direct payment permit is either voluntarily forfeited or cancelled by the comptroller's office must immediately notify all owners of the tax-exempt motor vehicles he rents, advising them that the exemption certificate issued to them is no longer valid.

(5) The motor vehicle rental direct payment permit may be used only by the legal entity (including its branches and divisions) to which it is issued. A permit holder may not authorize any other person or firm, including related corporations, to rent a motor vehicle tax free by using its permit. Use by other persons or firms is grounds for revocation of the permit.

(6) Under no circumstances may a permit holder give a motor vehicle rental tax direct payment exemption certificate to a contractor making an improvement to realty for the permit holder under either a separated or lump-sum contract. A contractor who does not personally hold a motor vehicle rental direct payment permit and who rents a motor vehicle for use in performing a contract must pay the motor vehicle rental tax to the owner of the rented motor vehicle.

(7) The holder of a valid motor vehicle rental tax direct payment permit must accrue the motor vehicle rental tax on any motor vehicles rented in Texas and subsequently used out of state.

(8) A motor vehicle direct payment permit holder must file a monthly return whether or not it has any motor vehicle rental tax to report. Failure to file returns timely will subject the holder to penalties and interest and revocation of the permit.

(9) A motor vehicle rental tax direct payment exemption certificate must comply substantially with the following certificate description. Each exemption certificate must bear the motor vehicle rental direct payment permit number of the permit holder.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 13, 1996.

TRD-9613430

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 463-4062

◆ ◆ ◆
34 TAC §3.88 §3.93

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.88 and §3.93, concerning moveable specialized equipment and off-road vehicles. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.88 and §3.93 will be included in the new §3.88, concerning moveable specialized equipment and off-road vehicles.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Reissig also has determined that for each year of the first five years the sections are in effect there will be no cost or benefit to the public from the repeal of these sections. The repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Tax Code, §111.002.

§3.88. *Moveable Specialized Equipment.*

§3.93. *Off-Road Vehicles.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062

◆ ◆ ◆
34 TAC §3.88

The Comptroller of Public Accounts proposes new §3.88, concerning moveable specialized equipment and off-road vehicles. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.88, is being proposed for repeal. The new section consolidates the substance of the current §3.88, concerning moveable specialized equipment, with the substance of §3.93, concerning off-road vehicles. Language is also included in subsection (a)(2) to address previous legislation that added units such as stingers and converter gears to the definition of motor vehicle.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §152.001.

§3.88. Moveable Specialized Equipment and Off-Road Vehicles.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Off-road vehicle - A self-propelled vehicle designed primarily for use off the public streets and highways. Specific examples of off-road vehicles are golf carts, fork lifts, go carts, race cars, and other types of vehicles, such as dirt bike motorcycles, that are not designed or intended by the manufacturer to meet registration and safety inspection requirements for motor vehicles.

(2) Motor vehicle - A self-propelled vehicle designed to transport persons or property upon the public highways and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes trucks, automobiles, trailers, trailers sold unassembled in a kit, semitrailers, house trailers, dollies, jeeps, stingers, auxiliary axles, converter gears, truck cab/chassis, and motorcycles. A unit that meets the definition of a "motor vehicle" does not lose its identity as a motor vehicle if tangible personal property is added to the vehicle allowing the unit to perform a specialized function but prohibiting the vehicle from transporting separate property or persons other than the driver. An example of such a vehicle would be a flatbed truck upon which oil well servicing equipment is attached.

(3) Moveable Specialized Equipment - A unit designed and built specifically to perform a specialized function that does not include transporting property separate from itself or persons other than the driver. Examples of moveable specialized equipment meeting these criteria are motorized cranes, motorized oil well servicing units, and mobile auto crushers.

(b) Application of tax.

(1) Off-road vehicles are subject to limited sales and use tax under the Tax Code, Chapter 151.

(2) Moveable specialized equipment is subject to limited sales and use tax under the Tax Code, Chapter 151.

(3) Motor vehicles are subject to motor vehicle sales and use tax under the Tax Code, Chapter 152, or interstate motor carrier sales and use tax under the Tax Code, Chapter 157.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062



Subchapter K. Hotel Occupancy Tax

34 TAC §3.162

The Comptroller of Public Accounts proposes an amendment to §3.162, concerning collection of tax. The comptroller has

determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The amendment consolidates the text in the current §3.162 with the substance of §3.165, concerning hotel occupancy tax base. The definition for hotel from the text in the current §3.162 will be included in the new §3.161, concerning definitions, exemptions, and exemption certificate.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §156.051 and §156.053.

§3.162. Hotel Occupancy Tax Base and Collection of the Tax.

(a) Tax Base

(1) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Charges for personal services - Charges which are unrelated to the cost of the actual occupancy of the room or rooms. Charges for personal services do not include charges which are related to the cleaning and readying of a room for occupancy.

(B) Occupancy - The use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose.

(2) Charges subject to the tax. All charges for items or services, other than personal services or charges for the use of a telephone, which are furnished in connection with the actual occupancy of the room are subject to the hotel occupancy tax. The taxable charges include charges for the use of a television and charges for the furnishing of additional beds or cots. These charges are includable within the tax base whether or not separately stated.

Figure: 34 TAC 3.162(a)(2)

(3) Charges not subject to tax. Charges for personal services are not subject to the hotel occupancy tax if they are separately stated. This includes charges for room service, messenger service, and valet service.

(4) **Package deals.** If a hotel includes meals, drinks, admission to tourist attractions, or any other unrelated benefit in the charge for lodging, hotel occupancy tax must be paid on the entire amount. Only if these charges are separately stated on the bill to the customer may they be deducted from the amount subject to tax.

(b) **Collection of Tax**

(1)[(a)] A charitable, eleemosynary, educational, or religious organization as [is] defined in §3.161 of this title (relating to Definitions, Exemptions, and Exemption Certificate)[relating to Definitions] that operates a hotel is not exempt from the requirement to report and pay hotel occupancy tax.

(2)[(b)] The hotel occupancy tax must be collected for the rental of meeting and banquet rooms located in a building having sleeping accommodations.

[(c)] The term "hotel" includes manufactured homes in which members of the public may obtain sleeping accommodations for a consideration.]

(3)[(d)] A person required to file a hotel occupancy tax report may withhold 1.0% of the tax due as shown on the report as reimbursement for the cost of collecting the tax. However, a person who fails to report the tax when due or fails to pay the tax within the required time may not claim the reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 12, 1996.

TRD-9613407

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062



34 TAC §3.165

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.165, concerning hotel occupancy tax base. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The section is being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.165 will be consolidated in the amended §3.162.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect there will be no cost or benefit to the public from the repeal of this section. The repeal is

adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal as proposed.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Tax Code, §111.002.

§3.165. *Hotel Occupancy Tax Base.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062



Subchapter O. State Sales and Use Tax

34 TAC §§3.290, 3.348, 3.349, 3.359

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §§3.290, 3.348, 3.349, and 3.359, concerning automotive repair and maintenance shops; accessories added to motor vehicles; moveable specialized equipment; motor vehicle and private aircraft. The comptroller has determined that the consolidation of sections involving similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.290 includes the substance of current §3.290; §3.348, concerning Accessories Added to Motor Vehicles; §3.349, concerning Moveable Specialized Equipment; and the portion dealing with motor vehicles in §3.359, concerning Motor Vehicles and Private Aircraft. The portion of §3.359 dealing with private aircraft is being consolidated into §3.292, concerning Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals will be in effect there will be no revenue impact on state or local government as a result of enforcing or administering the sections.

Mr. Reissig also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the sections will be in providing a

more effective means of obtaining information. The repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.290. *Automotive Repair and Maintenance Shops.*

§3.348. *Accessories Added to Motor Vehicles.*

§3.349. *Moveable Specialized Equipment.*

§3.359. *Motor Vehicles and Private Aircraft.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 463-4028



34 TAC §3.290

The Comptroller of Public Accounts proposes new §3.290, concerning motor vehicle repair and maintenance; accessories and equipment added to motor vehicles; moveable specialized equipment. The comptroller has determined that the consolidation of sections involving similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.290, concerning Automotive Repair and Maintenance Shops; §3.348, concerning Accessories Added to Motor Vehicles; §3.349, concerning Moveable Specialized Equipment, and §3.359, concerning Motor Vehicles and Private Aircraft are being proposed for repeal. The new section §3.290 includes the substance of 34 TAC §§3.290, 3.348, 3.349, and the portion of §3.359 dealing with motor vehicles. The portion of §3.359 dealing with private aircraft is being consolidated into §3.292, concerning Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

Subsection (n) (2) clarifies policy allowing the sale for resale exemption under Tax Code, Chapter 151, for accessories and equipment attached to motor vehicles that are held for sale, lease, or rental.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing a more effective

means of obtaining information. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §§151.006, 151.007, 151.010, 151.0101, 151.060, 151.102, 151.151, 151.3111, 151.801.

§3.290. *Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessories - Nonessential tangible personal property attached to a motor vehicle for the convenience or comfort of the operator or passengers, or to assist or aid in the transportation, loading, or unloading of tangible personal property. Examples include car radio, air conditioner, refrigerator on a meat van, or a concrete mixer.

(2) Agreed contract price for materials - The price specified in the contract for the materials plus any additional charges directly attributable to the materials. For example, the cost of transportation of the materials, profit calculated as a percentage of the cost of materials, or markup or handling charges related directly to the materials charge, is included in the agreed contract price. A charge calculated as a percentage of the total contract cost will not be considered a part of the materials' selling price. The agreed contract price of the materials cannot be less than the price the repairman paid for materials.

(3) Component - A part of a motor vehicle such as tires, batteries, shock absorbers, and mufflers or a motor vehicle system such as the suspension, electrical, or cooling systems necessary to the proper operation of a motor vehicle and including any part of the chassis or body.

(4) Consumable supplies - Tangible personal property, except natural gas and electricity, used directly in a repair operation or in the repair area, which after used for its intended purpose, is completely used up, or which is not retained or reusable by the person providing the service. Consumable supplies do not include office supplies or other tangible personal property used in the general operation of the business.

(5) Equipment attachment - A part attached to a motor vehicle which is neither a component, nor an accessory, but which may be cargo that the vehicle transports, such as a welder, crane, compressor, or other type equipment.

(6) Extended warranty or service policy - This contract is sold to the buyer of the product for an additional amount. The

provisions of the contract become effective after the manufacturer's warranty expires.

(7) Install or installation - To set tangible personal property in place for use or service. Install or installation does not include:

(A) the removal and/or replacement of a defective or broken part of a motor vehicle; or

(B) the addition of tangible personal property causing a change in the motor vehicle that constitutes remodeling.

(8) Lump-sum contract - A written agreement in which the agreed price for doing a job is one lump-sum amount and in which the charges for materials are not separate from the charges for skill and labor. Separated invoices issued to the customer will not change a written lump-sum contract into a separated contract unless the terms of the contract require separated invoices.

(9) Maintenance - All work on operational and functioning motor vehicles necessary to sustain or support safe, efficient, continuous operations, or to keep in good working order by preventing the decline, failure, lapse, or deterioration of the motor vehicles.

(10) Manufacturer's written warranty - A guarantee by the manufacturer that the product at the time of sale is operable and will remain operable for a specified period of time. The manufacturer's warranty is provided without additional cost to the buyer.

(11) Motor vehicle - A self-propelled unit designed to transport property separate from itself or persons other than the driver upon the public highways. The term also includes trailers, semi-trailers, and house trailers. A unit which meets the definition of a "motor vehicle" does not lose its identity as a motor vehicle if tangible personal property is added to the vehicle allowing the unit to perform a specialized function but prohibits the vehicle from transporting separate property or persons other than the driver. An example of this would be a flatbed truck upon which oil well servicing equipment is attached. All motor vehicles are subject to the provisions of the Tax Code, Chapter 152.

(12) Moveable specialized equipment - A unit designed and built specifically to perform a specialized function which does not include transporting property separate from itself or persons other than the driver is not a motor vehicle. Examples of moveable specialized equipment meeting these criteria are motorized cranes, motorized oil well servicing units, and mobile auto crushers. Moveable specialized equipment is subject to the provisions of the Tax Code, Chapter 151.

(13) Remodel - To modify the style, shape, or form of motor vehicles belonging to another.

(14) Repair - To mend or restore to working order or operating condition a motor vehicle that was broken, worn, damaged, defective, or malfunctioning.

(15) Repairman - For the purposes of this section, any person who, operating under a lump-sum or separated contract, restores, repairs, or replaces an inoperable or malfunctioning component of a motor vehicle.

(16) Separated contract - A written agreement which is divided into a separately stated price for materials and a separately stated price for skill and labor. If prices of materials and labor are separately stated, the fact that the charges are added together and a sum total given is irrelevant. When the contract itself does not

contain specific amounts for materials and labor, but provides that all invoices will separate the charges for materials from the charges for skill and labor, the contract will be regarded as a separated contract.

(b) Sale and installation. Except when replacing a defective or inoperative component or accessory, a person engaged in the sale and installation of motor vehicle component parts and accessories must collect sales tax on the price charged for the parts, accessories, and installation. The removal and replacement of defective, worn, or unsafe accessories or components is a repair and not a sale and installation.

(1) Except when replacing a defective or inoperative component or accessory, the total charge for the sale and installation of an accessory or a component is subject to tax regardless of whether the charge is lump-sum or separated.

(2) The replacement of a defective or inoperative component or accessory is a repair of a motor vehicle. The tax responsibility of the persons repairing motor vehicles is covered in subsections (g) and (h) of this section. The repair of a motor vehicle component or of an accessory is considered the repair of a motor vehicle.

(3) The repair of equipment attachments is considered the repair of tangible personal property and is taxed according to §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) .

(c) Manufacturing. The repair and rebuilding of motor vehicle component parts to be sold is manufacturing and the labor charged is subject to tax whether included in the selling price or stated separately.

(d) Repair of motor vehicle components or accessories. A person may repair a motor vehicle component or accessory for the general repairman who is performing general repair work on a motor vehicle.

(1) If the person repairing the component or accessory separates the price charged for parts from the repair labor, the general repairman may issue a resale certificate for the parts. The repair labor is not taxable.

(2) If the person repairing the component or accessory charges one lump-sum amount for the repair of the component or accessory, the person is a lump-sum repairman under subsection (g) of this section.

(e) Federal excise tax. The sales price upon which the tax is based must include any manufacturer's federal excise tax.

(f) Fuels. Gasoline, L.P. gas, diesel, and kerosene are exempt from the sales tax.

(g) Responsibilities of repairman of motor vehicles operating under lump-sum repair contracts.

(1) Labor to repair motor vehicles is not taxable. A person repairing a motor vehicle for a lump-sum price is not a retailer of a taxable item and may not issue a resale certificate for parts or material used or consumed in such repair.

(2) Under a lump-sum contract, the repairman is the ultimate consumer of consumable supplies, tools, equipment, and all materials incorporated into the motor vehicle being repaired. The lump-sum repairman must pay the tax to suppliers at the time of purchase. The repairman will not collect tax from customers on the

lump-sum charge or any portion of the charge. Under this type of contract, the repairman will pay the tax on materials even when the property is repaired for an exempt customer.

(3) A lump-sum repairman may use materials from inventory that were originally purchased tax free by use of a resale certificate. In those instances, the repairman incurs a tax liability based upon the purchase price of the materials and must report and remit the tax to the comptroller.

(h) Responsibilities of repairman of motor vehicles operating under separated repair contracts.

(1) Materials. Under a separated repair contract, the repairman of a motor vehicle is a retailer and may issue a resale certificate in lieu of tax to suppliers for materials that will be incorporated into the motor vehicle of the customer; the repairman must then collect tax from the customer on the agreed contract price of the materials, which must not be less than the amount the repairman paid to suppliers. The repairman must obtain a tax permit to be able to issue a resale certificate in lieu of tax when materials are purchased. The repairman may also use materials from inventory upon which tax was paid to the supplier at the time of purchase. In these instances, tax will be collected from the customer on the agreed contract price of the materials as if the materials had been purchased with a resale certificate; however, the repairman will remit tax to the comptroller only on the difference between the agreed contract price and the price paid to the supplier. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers) .

(2) Labor. Labor to repair motor vehicles is not taxable.

(3) Consumable supplies. A repairman of motor vehicles may issue a resale certificate in lieu of tax to suppliers for consumable supplies as well as materials incorporated into the motor vehicle. The repairman of a motor vehicle must then collect sales tax from customers on the charge for consumable supplies as well as the charge for materials.

(4) Tools and equipment. A repairman of a motor vehicle is the ultimate consumer of tools and equipment used which are not incorporated into the motor vehicle being repaired. The repairman must pay tax to suppliers of these items at the time of purchase. The repairman may not collect tax from customers on any charges for these items.

(5) Exempt customers. In repairing a motor vehicle belonging to an exempt customer under a separated contract, the repairman may accept an exemption certificate in lieu of collecting tax on materials incorporated into the motor vehicle.

(i) Responsibilities of remodelers. Remodelers of motor vehicles are providing taxable services and should refer to §3.292 of this title (relating to Repair, Maintenance, and Restoration of Tangible Personal Property) .

(j) Manufacturer's warranties.

(1) No tax is due on parts or labor furnished by the manufacturer to repair a motor vehicle under a manufacturer's warranty or recall campaign.

(2) Records must be kept by the repairman that show that the service and parts were used in repairing an item under a manufacturer's warranty or recall.

(3) The repairman may purchase parts to be used in repairs under a manufacturer's warranty or recall tax free by issuing an exemption certificate to the supplier.

(k) Extended warranties and service contracts. A repairman performing services under an extended warranty covering a motor vehicle must collect tax on the parts as required under subsection (h) of this section.

(l) Maintenance. Tax is not due on the labor to maintain motor vehicles. Refer to subsections (g) and (h) of this section for the repairman's responsibilities for tangible personal property used in maintenance.

(m) Accessories and equipment added to motor vehicles.

(1) The purchase of a motor vehicle and all accessories and equipment attached thereto at the time of sale is subject to the provisions of the Tax Code, Chapter 152 (motor vehicle sales and use tax) .

(2) The purchase of accessories and equipment for a motor vehicle attached after the time of sale of the motor vehicle is subject to the provisions of the Tax Code, Chapter 151 (limited sales, excise, and use tax) .

(3) The purchase of tangible personal property is subject to the provisions of the Tax Code, Chapter 151 (limited sales, excise, and use tax) , if no item can be identified as a motor vehicle even if the combination of items of tangible personal property becomes a motor vehicle. If items of tangible personal property are combined to produce a motor vehicle, the initial titling of the motor vehicle in the name of the person who produced the motor vehicle is not subject to the provisions of the motor vehicle sales and use tax. If, however, the motor vehicle is titled in any other person's name, the transfer is subject to the provisions of the motor vehicle sales and use tax.

(4) For this purpose, the terms "accessories" and "equipment" include, but are not limited to, bodies, cement mixers, refrigeration units, fertilizer spreaders, and oil well servicing equipment.

(n) Use of resale certificate. For the purposes of this section, the words "leased" and "rented" are defined by the Tax Code, Chapter 152 (motor vehicle sales and use tax law) .

(1) Items combined into a motor vehicle. A limited sales tax resale certificate may be used in purchasing tangible personal property to be combined into a motor vehicle held for sale, lease, or rental in the purchaser's regular course of business.

(2) Accessories and equipment attached to rental or lease motor vehicles. A limited sales tax resale certificate may be used in purchasing accessories and equipment that are attached to a motor vehicle held for sale, rental, or lease in the purchaser's regular course of business.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4028



34 TAC §3.320

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.320, concerning ice and dry ice. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The information in this section may be found in 34 TAC §3.293, concerning Food; Food Products; Meals; Food Service; §3.296, concerning Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer; §3.300, concerning Manufacturing; Custom Manufacturing; Fabricating; Processing; and §3.314, concerning Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Reissig also has determined that for the first five years the repeal is in effect there will be no cost or benefit to the public from the repeal of this rule. The repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal as proposed.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Tax Code, §111.002.

§3.320. *Ice and Dry Ice.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

34 TAC §3.338, §3.340

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.338 and §3.340, concerning multistate tax credits and allowance of credit for tax paid to suppliers. The comptroller has determined the consolidation of sections involving similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the sections being repealed will be included in new §3.338, concerning allowance of credit for tax paid to suppliers.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals will be in effect there will be no revenue impact on state or local government as a result of enforcing or administering the sections.

Mr. Reissig also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the rules will be in clarification of comptroller rules related to the franchise tax. The repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.338. *Allowance of Credit for Tax Paid to Suppliers.*

§3.340. *Multistate Tax Credits.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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34 TAC §3.338

The Comptroller of Public Accounts proposes new §3.338, concerning multistate tax credits and allowance of credit for tax paid to suppliers. The comptroller has determined that the consolidation of sections involving similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The new section consolidates the substance of the current §3.338, concerning allowance of credit for tax paid to suppliers, with §3.340, concerning multistate tax credits, which are being simultaneously repealed. Language was added to subsection (c) (3) to clarify that the subsection addresses tax paid on taxable items that are not resold but

are used for nontaxable purposes. Language was also added to subsection (c) (3) (B) to clarify that it applies to wrapping, packing, or packaging materials used by a manufacturer.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing a more effective means of obtaining information. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §§111.104, 141.001, 151.006, 151.007, 151.010, 151.0101, 151.056, 151.303, 151.427.

§3.338. Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers.

(a) Definitions. The following words and terms, when used in this section, shall have the following means, unless the context clearly indicates otherwise.

(1) Multistate Tax Compact - An agreement between member states to promote uniform tax treatment and to avoid double taxation of multistate taxpayers.

(2) Sales tax - A tax imposed on the transfer for a consideration of title or possession of taxable items. See Tax Code, §151.005.

(3) Use tax - For the definition of use tax, see §3.346 of this title (relating to Use Tax) . Use tax is complementary to the sales tax and is imposed on the storage, use, or other consumption of taxable items.

(b) Multistate tax credits.

(1) As a member of the multistate compact, Texas will allow as a credit against Texas use tax due any combined amounts of legally imposed sales or use taxes paid on the same property to another state or any subdivision of another state. Credit will be allowed even though the other state may not be a member of the multistate compact.

(2) The credit shall be applied first against the amount of any use tax due the Metropolitan Transit Authority or City Transit Department. Credit shall then be applied against county use tax due, if any, and then against the amount of any city use tax due. Finally, any remaining credit shall be applied against use tax due the state.

(3) Sales tax legally imposed by the State of Texas will not be refunded because of payment of a use tax imposed by another state.

(4) Use tax collected by the State of Texas will be refunded or allowed as a credit on subsequent sales and use tax returns to the extent of a subsequent payment of use tax to another state, if the other state's use tax was imposed as a result of the taxable item's use in that state prior to its use in Texas.

(5) Credit against the Texas use tax will not be allowed for sales tax paid to another state that was not legally due and paid to another state.

(6) Credit against the Texas use tax will not be allowed for any gross receipts tax imposed on retailers in another state, which tax is not customarily separated from the sales price of taxable items and is not passed on directly to customers as tax.

(c) Credit for tax paid to suppliers by sellers, taxable service providers, and persons other than contractors.

(1) Except as provided in paragraphs (2) and (3) of this subsection, credit may be claimed on the purchaser's return for tax paid to suppliers if the taxable items were resold prior to making a taxable use of the items. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) .

(A) Before taking credit on a return, the taxpayer must have a receipt from a Texas retailer or other seller authorized to collect the Texas sales and use tax. The receipt must reflect the tax paid and the selling price of the taxable items.

(B) Credit may be claimed on a return for a later reporting period or by filing an amended return for the reporting period in which the tax was accrued and paid in error.

(2) Credit may not be claimed on a purchaser's return for tax paid to a supplier on items on which tax is not due or at rates in excess of the rate that the supplier is required to pay. The tax must be recovered from the seller.

(3) Tax paid to a supplier on taxable items that the purchaser does not resell but uses for nontaxable purposes may not be claimed as a credit on the purchaser's return. Such tax must be recovered from the seller. For example:

(A) tangible personal property necessarily used or consumed during an actual manufacturing, processing, or fabricating operation is not "resold" when the end product of the manufacturing process is itself sold. Therefore, tax paid on tangible personal property that is subsequently used or consumed in an actual manufacturing, processing, or fabricating operation may not be claimed as a credit on the purchaser's (manufacturer's) return;

(B) wrapping, packing, or packaging materials used by a manufacturer for the purpose of expediting or furthering in any way the sale of tangible personal property is not "resold" when the tangible personal property is itself sold. Therefore, tax paid on the wrapping, packing, or packaging materials may not be claimed as a credit on the purchaser's return.

(4) Local sales and use tax credit may also be claimed but only when the tax paid to the supplier was for the same local taxing jurisdiction to which the taxpayer (purchaser) is required to remit tax. Local sales or use tax paid to a supplier in a local taxing jurisdiction other than the one in which the taxable items are subsequently resold must be recovered from the supplier. Local tax due the same local taxing jurisdiction may be reduced by the amount of previously paid tax.

(d) Credit for tax paid to suppliers by certain contractors and repairmen. For the definition of contractor and separated contracts, see §3.291 of this title (relating to Contractors and Improvements to Realty) .

(1) A contractor improving real property under a separated contract may claim credit on the contractor's return for Texas sales and use tax paid to a supplier on taxable items incorporated into the property being improved. No credit may be taken on the contractor's return when no sales or use tax liability is incurred in the subsequent incorporation of the taxable items into real property. For example, no sales or use tax liability is incurred when the contract is with an exempt organization. Therefore, tax paid to a supplier for taxable items may not be claimed as a credit on the contractor's return.

(2) Local sales and use tax credit may also be claimed but only when the tax paid to the supplier was for the same local taxing jurisdiction to which the contractor is required to remit tax. Local sales or use tax paid to a supplier in a local taxing jurisdiction other than the one in which the taxable items are subsequently resold must be recovered from the supplier. Local tax due the same local taxing jurisdiction may be reduced by the amount of previously paid tax.

(3) Credit for tax paid to supplier will be limited to the amount of tax otherwise due to be reported by the contractor on the subsequent incorporation of the same tangible personal property on which tax was paid to the supplier into real property upon which an improvement is performed.

(4) Before taking credit on the contractor's return, the contractor must have receipts from a Texas retailer or other seller licensed to collect the Texas sales or use tax. The receipt must reflect the tax paid and the selling price of the taxable items.

(5) Credit may be claimed on a return for a later period or by filing an amended return for tax accrued and paid in error by the contractor.

(e) Responsibilities of persons repairing motor vehicles and private aircraft. For details on the tax responsibilities of persons repairing motor vehicles and private aircraft, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) ; and §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment added to Motor Vehicles; Movable Specialized Equipment) . Persons repairing motor vehicles and private aircraft may claim credit on their returns for tax paid to suppliers only if the repairs are performed under separated contracts.

(f) Effect of ruling on taxpayer's rights to other deductions. Nothing in this rule shall be construed as limiting the taxpayer's right to the deductions for bad debts, repossessions, returned sales, or renegotiated selling price as provided in the statutes or other rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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Subchapter GG. Insurance Tax

34 TAC §§3.812-3.816, §3.824

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §§3.812-3.816, 3.824 concerning insurance tax report forms used by insurers, surplus lines agents or other entities, for tax years 1989-1992. The report forms that the rules require to be completed are obsolete and not used by the comptroller. House Bill 1461, 73rd Legislature, 1993, transferred tax collection responsibilities from the Department of Insurance to the Comptroller of Public Accounts and enacted the Insurance Code, Article 1.04D, (c) , which gives the comptroller the authority to prescribe appropriate tax report forms and due dates.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals will be in effect there will be no revenue impact on state or local government as a result of enforcing or administering the sections.

Mr. Reissig also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the rule will be in clarification of comptroller rules related to the franchise tax. These repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.812. *Preparation of 1989 Tax Returns.*

§3.813. *Preparation of 1990 Tax Returns by Surplus Lines Agents.*

§3.814. *Preparation of 1990 Tax Returns.*

§3.815. *Preparation of 1992 Tax Returns by Insurers and Other Entities.*

§3.816. *Preparation of 1991 Tax Returns by Surplus Lines Agents.*

§3.824. *Semiannual Tax Report.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 9. Property Tax Administration

Subchapter G. Truth in Taxation Requirements

34 TAC §9.2001

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.2001, concerning the publishing of a notice of public hearing on a proposed tax increase. The repeal of this section is necessary because this rule is a duplicate of §9.17, which superseded the rule for which repeal is proposed.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under the Tax Code, §26.06, which requires the comptroller to prescribe by rule the form for publishing notice of public hearing on tax increase.

The repeal implements the Tax Code, §26.06.

§9.2001. *Notice of Public Hearing on Tax Increase.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §9.2002

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.2002, concerning the form and content of notices of effective and rollback tax rates. The repeal of this section is necessary because this rule is a duplicate of §9.19 which was repealed in 1995.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under the Tax Code, §26.04, which requires the comptroller to prescribe the form for publishing notice of effective and rollback tax rates.

The repeal implements the Tax Code, §26.04.

§9.2002. *Notice of Effective and Rollback Tax Rates.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter H. Tax Record Requirements

34 TAC §9.3017, §9.3035

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.3017 and §9.3035, concerning exemption applications for charitable organizations and special use application forms. The repeal of these sections is necessary because these rules are duplicates of 34 TAC §9.401 and §9.402, which superseded the rules for which repeal is proposed.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeals will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeals.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §§11.43, 23.43(d), 23.54(c), 23.75(c), 23.84(f) and 23.94(f), which provides the comptroller with the authority to prescribe the contents of application forms for each type of exemption and for special appraisal of certain property.

The repeals implement Acts 1991, 72nd Legislature, Second Called Session, page 41, chapter 6, §67(c), effective November 26, 1991, which provides that the rules of the former State Property Tax Board remain in effect until superseded by rules adopted by the Comptroller of Public Accounts.

§9.3017. *Exemption Applications for Charitable Organizations.*

§9.3035. *Special Use Application Forms.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

Subchapter I. Validation Procedures

34 TAC §9.4027

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.4027, concerning the appraisal of special inventory. This rule defines the term "most recent" contained in the definition of "unit property tax value factor" in the Tax Code, §23.12B(10). This statute was amended by Acts 1995, 74th Legislature, Chapter 945, §3, which deleted the term "most recent" from the statute. Consequently, this rule is no longer necessary.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under Acts 1995, 74th Legislature, Chapter 945, §3, which deleted the term "most recent" from the statute.

The repeal implements Acts 1995, 74th Legislature, Chapter 945, §3.

§9.4027. *Appraisal of Special and Vessel and Outboard Motor Inventories.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chief, General Law

Comptroller of Public Accounts

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For further information, please call: (512) 463-4028



Subchapter J. Procedures

34 TAC §§9.5001-9.5003, 9.5021, 9.5061, 9.5072-9.5077

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §§9.5001-9.5003, 9.5021, 9.5061, 9.5072-9.5077, concerning the purpose, construction, scope, definitions, and general provisions of the rules of practice and procedure governing hearings before the State Property Tax Board. The repeals also concern protests and audits arising from school property values and appraisal district ratio findings. Also, the repeals concern the method of filing a protest, scheduling a protest hearing, the conduct of a protest hearing, and the issuance of proposed and final decisions. The repeal of these sections is necessary because these rules are duplicates of 34 TAC §§9.1, 9.3-9.14, which superseded the rules for which repeal is proposed.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Government Code, §403.303(c), (formerly Education Code, §11.86(e)), which provides the comptroller with the authority to adopt procedural rules governing the conduct of the protest hearings.

The repeals implement Acts 1991, 72nd Legislature, Second Called Session, page 41, chapter 6, §67(c), which provides that rules of the former State Property Tax Board remain in effect until superseded by rules adopted by the Comptroller of Public Accounts.

§9.5001. *Purpose.*

§9.5002. *Construction.*

§9.5003. *Scope.*

§9.5021. *Definitions.*

§9.5061. *General Provisions Concerning Protest Hearings.*

§9.5072. *Protests and Audits Arising from School Property Values and Appraisal District Ratio Findings.*

§9.5073. *Method of Filing a Protest.*

§9.5074. *Scheduling a Protest Hearing.*

§9.5075. *Conduct of Hearing.*

§9.5076. *Proposed Decision.*

§9.5077. *Final Decision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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34 TAC §§9.5004, 9.5005, 9.5051-9.5055, 9.5091

The Comptroller of Public Accounts proposes the repeal of §§9.5004, 9.5005, 9.5051- 9.5055, 9.5091, concerning the distinction between a rule and a guideline, the certification of current franchise tax status, the applicability of the Administrative Procedure Act to rulemakings, the proposal of rules relating to open space land and qualified timber land, notice of the adoption, repeal of or amendment of rules or guidelines, the opportunity to appear before the board regarding rulemakings, board hearings regarding rules or guidelines, and hearings convened under the Administrative Procedure and Texas Register Act. These rules concern rulemakings and hearings of the State Property Tax Board which was abolished in 1991. Consequently, these rules are no longer necessary.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Acts 1991, 72nd Legislature, Second Called Session, page 41, chapter 6, §67(c), effective November 26, 1991, which provides that rules of the former State Property Tax Board remain in effect until superseded, repealed, or withdrawn by the Comptroller of Public Accounts.

The repeals implement Acts 1991, 72nd Legislature, Second Called Session, page 41, chapter 6, §67(c), effective November 26, 1991, which provides that rules of the former State Property Tax Board remain in effect until superseded, repealed, or withdrawn by the Comptroller of Public Accounts.

§9.5004. *Distinction Between Rule and Guideline.*

§9.5005. *Certification of Current Franchise Tax Status.*

§9.5051. *APA Controlling.*

§9.5052. *Open-Space Land.*

§9.5053. *Notice.*

§9.5054. *Opportunity to Appear.*

§9.5055. *Board Hearing.*

§9.5091. *Hearings Convened under the Administrative Procedure and Texas Register Act.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 463-4028



34 TAC §§9.5081-9.5084

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §§9.5081-9.5084, concerning protests arising from the valuation of intangibles or rolling stock, the conduct of protest hearings, and the issuance of proposed and final decisions. The rules are being repealed because their provisions are obsolete and unnecessary because the comptroller no longer has appraisal responsibility for business intangibles. Also, rules regarding protests of appraisals of rolling stock are subject to 34 TAC §9.801, concerning notice of protest.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Acts 1993, 73rd Legislature, chapter 464, §1, which repealed Tax Code, Chapter 24,

Subchapter A, regarding the valuation of transportation business intangibles.

The repeals implement the repeal of Tax Code, Chapter 24, Subchapter A. §9.5081. Protests Arising from Intangibles or Rolling Stock.

§9.5082. *Conduct of Hearing.*

§9.5083. *Proposed Decision.*

§9.5084. *Final Decision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 12, 1996.

TRD-9613392

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 463-4028



34 TAC §9.5142, §9.5143

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.5142 and §9.5143, concerning notice of protest and affidavits for protest hearings before the appraisal review board. The repeal of these sections is necessary because these rules are duplicates of 34 TAC §9.801 and §9.802, which superseded the rules for which repeal is proposed.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeal will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §5.03, which provides the comptroller with the authority to adopt rules setting minimum standards for operation of appraisal districts.

The repeals implement the Tax Code, §5.03, which provides the comptroller with the authority to adopt rules setting minimum standards for operation of appraisal districts and also Acts 1991, 72nd Legislature, Second Called Session, page 41, chapter 6, §67(c), which provides that rules of the former State Property Tax Board shall remain in effect until superseded, repealed, or withdrawn by the Comptroller of Public Accounts.

§9.5142. *Notice of Protest.*

§9.5143. *Affidavit for Protest Hearing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 12, 1996.

TRD-9613393

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 463-4028



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 181. General Rules of Practice and Procedures

Subchapter F. Fees

40 TAC §181.830

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §181.830, concerning Recommended Fees Schedule for the Payment of Certified Interpreters for the Deaf and Hard of Hearing. This amendment is proposed to clarify the issues of minimum assignment time, portal to portal calculation, and cancellation of assignment pay.

David W. Myers, Executive Director, has determined that there will be no fiscal implication for state or local government as a result of the amendment of this section.

Mr. Myers also has determined that the public benefit anticipated as a result of this amendment will be clearer understanding of interpreter billing time. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

This amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code, Title 40, Chapter 181, Subchapter F, §181.830.

§181.830. *Recommended Fees Schedule for the Payment of Interpreters for the Deaf and Hard of Hearing. [Hearing Impaired].*

(a) (No change.)

(b) Minimum fee payment. The certified interpreters should be reimbursed a guaranteed two-hour minimum **for an assignment, plus travel** [, with] time **which is** calculated portal to portal. **Should**

the assignment cancel before any travel is required, only the two hour minimum will apply.

(c)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 9, 1996.

TRD-9613500

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 451-8494



Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter D. Denial, Suspension, or Revocation of a Certificate

40 TAC §183.501

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §183.501, concerning Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application. This amendment is proposed to identify specific violations of the Board for Evaluation of Interpreters (BEI) rules and/or Principles of Ethical Behavior which will allow disciplinary action against interpreters who violate the rules as they are set forth.

David W. Myers, Executive Director, has determined that there will be no fiscal implication for state or local government as a result of the amendment of this section.

Mr. Myers also has determined that the public benefit anticipated as a result of this amendment will be an impact on the board's authority to enforce the rules of operation. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the section as proposed.

Comments on this amendment may be submitted to Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

This amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code, Title 40, Chapter 183, Subchapter D, §183.501.

§183.501. Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application.

The Texas Commission for the Deaf and Hard of Hearing may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation an interpreter for any of the following causes:

(1) (No change.)

(2) use of drugs or intoxicating liquors to an extent that affects his or her professional competence. This includes: the use of drugs or intoxicating liquors **during an interpreting assignment**, whether or not controlled, to an extent that is dangerous to the interpreter or applicant, or any other member of the public; the use of drugs or intoxicating liquors **during an interpreting assignment**, to the extent that such use impairs the interpreter's or applicant's ability to perform the work of interpreting in a safe and responsible manner;

(3)-(11) (No change.)

(12) failure to meet requirements for certification maintenance; [or]

(13) engaging in the practice of interpreting while certification is suspended; **or**

(14) falsification of re-certification documents by altering original letters, certificates issued through continuing education, or attendance verification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 9, 1996.

TRD-9613423

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: October 25, 1996

For further information, please call: (512) 451-8494



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter G. Regulations for Taking, Possessing, and Transporting Threatened Nongame Species

31 TAC §65.175, §65.176

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the proposed new

§65.175 and §65.176, which appeared in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7009).

Issued in Austin, Texas, on September 12, 1996.

TRD-9613419

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: September 12, 1996

For further information, please call: (512) 389-4642



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part VII. Texas Agriculture Resources Protection Authority

Chapter 101. General Rules

Subchapter A. Routine Procedures

4 TAC §101.20

The Agriculture Resources Protection Authority (the Authority) adopts new §101.20, concerning reporting requirements for agencies under the Authority's jurisdiction, without changes to the proposed text published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6124).

The new section is adopted to implement legislative changes made to the Texas Agriculture Code, §76.009 by the 74th Legislature (1995). The new section provides procedures for reporting of pesticide regulatory enforcement activities by agencies under the jurisdiction of the Authority including time and place for reporting, content of reports, commenting by the Authority and agencies on reports filed, and a definition of "pesticide regulatory enforcement activity".

No comments were received on the proposal.

The new section is adopted under the Texas Agriculture Code, §76.009, which provides the Texas Agriculture Resources Protection Authority with the authority to adopt rules relating to any duty of the Authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 13, 1996.

TRD-9613499

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Effective date: October 4, 1996

Proposal publication date: July 5, 1996

For further information, please call: (512) 463-7583



TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter H. Discovery Procedures

16 TAC §22.142

The Public Utility Commission of Texas adopts an amendment to Procedural Rule §22.142, relating to Limitations on Discovery and Protective Orders with changes to the proposed text as published in the June 4, 1996, issue of the *Texas Register* (21 TexReg 4930). The amendment will provide for limitations on requests for information (RFIs) during the discovery phase of a proceeding before the commission.

A public hearing on the amendment was held at Commission offices on June 12, 1996 at 10:00 a.m. Representatives from Texas Utilities Electric Company (TU) and Houston Lighting and Power Company (HL&P) attended the hearing; however no oral comment was presented for the record.

The commission received written comments on the proposed amendments from Central and South West Corporation (CSW), the Office of Public Utility Counsel (OPUC), Southwestern Bell Telephone Company (SWB), HL&P, GTE Southwest Inc. (GTE), TU, and Entergy.

CSW, GTE, and TU all commented that subsection (d)(2) of the proposed amendment, which provides that RFIs that do not have to be answered shall not be counted toward the propounding party's limit, was ill-advised. The commenting parties were concerned that by not counting questions that were poorly worded, irrelevant, or for some other reason objectionable, the propounding party would have no incentive to be thorough and efficient in discovery. OPUC responded to the parties in reply comments that "just because reasonable parties disagree and an ALJ or the commission disagrees with one party's point of view does not mean that the propounding party asked frivolous, trivial, or not well-thought out questions. It simply means that the propounding party was unable to convince the ALJ or the commission of the relevancy of the question."

The commission agrees with both arguments presented by the parties and, therefore, has amended the proposed text to give

the presiding officer discretion in determining whether disputed requests should count toward the propounding party's limit. The amended text is contained in subsection (d)(3) of the rule.

CSW and SWB suggested clarification as to what constitutes a single request; specifically, the commenting parties recommended limiting the number of answers rather than RFIs per se. The parties' concern was to ensure that a single question required a single response, and that when questions contain subparts, each subpart would be considered a separate question and would count toward the propounding party's limit.

The commission intended that the presiding officer would consider the number of subparts in a question when setting limits on discovery, which is why subsection (d)(1)(H) addresses the number of answers required. However, to clarify that subparts to questions shall be considered separate requests for purposes of calculating the propounding party's limit, the commission has added a new subsection (d)(2) to address this point specifically.

Virtually every party opposed the language in the proposed amendment that allows one party to yield its unused questions to any other party. CSW's comments, which were largely reflective of the other comments of the other parties, stated that the "provision would encourage more discovery, since a party could contact a minor or inactive intervenor to obtain additional discovery . . . providing parties with a loophole through which to ask more questions beyond the scrutiny of the ALJ."

The commission finds that the proposed text is appropriate in that it encourages parties to be accountable for their own discovery requests. The commission believes that the elimination of this provision would leave open the possibility that parties might find other means of pursuing additional discovery outside the purview of the presiding officer or the commission; therefore, the commission makes no change to the amendment based on these comments.

GTE commented that proposed subsection (d)(3) seemed to allow the general counsel to donate its "unused RFI's to any other party in the proceeding" and stated a concern over who would receive the general counsel's unused allotment.

The commission's intent was to allow parties to yield their unused allotments to any party other than the general counsel, not for the general counsel to yield its allotment to another party. The commission has clarified the language of the proposed text (now subsection (d)(4)) to inform the parties that the general counsel will neither receive nor provide any unused discovery allotments.

OPUC commented that because its role and circumstances are similar to those of the general counsel, it should also benefit from the provision which allows the presiding officer to consider the general counsel's public interest role and limited resources in limiting the discovery to be propounded upon the general counsel.

The commission agrees that the OPUC operates under similar resource constraints as the general counsel and therefore amends that portion of the rule to give the presiding officer discretion in setting a limit on the number of requests that can be propounded on the OPUC.

OPUC asked for a like exception to the limit on the number of requests it can propound. The commission finds that subsection (d)(1) of the published text is responsive to OPUC's concern in that it lists the factors a presiding officer shall consider before setting limitations on RFIs. Specifically, subparagraph (F) of this subsection directs the presiding officer to consider the number of issues that the party seeking discovery is expected to address; therefore, at that time, OPUC's role and limited resources can be taken into consideration. Since the commission believes that OPUC's concern is addressed by the amendment as published, it makes no changes to the rule based on this comment.

The amendment is adopted under Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995.

§22.142. Limitations on Discovery and Protective Orders.

(a) Limitation of Discovery Requests. The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.

(1)-(3) (No change.)

(4) The presiding officer may limit requests for information (RFIs) as set out in subsection (d) of this section.

(b)-(c) (No change.)

(d) Limitations on Requests for Information.

(1) Before setting limitations on RFIs, the presiding officer shall consider the factors set out in subparagraphs (A)-(K) of this paragraph.

(A) The type of proceeding.

(B) The number and complexity of the issues in the proceeding.

(C) The cost of alternative forms of discovery for the party seeking discovery.

(D) The comprehensiveness of the information provided in the application.

(E) Any material deficiencies in the application.

(F) The number of issues that the party seeking discovery is expected to address.

(G) The novelty of the issues in the proceeding.

(H) The number of answers required by requests, including subparts, propounded in similar proceedings.

(I) Whether the number of questions is limited in other forms of discovery.

(J) Whether the hearing on the merits will be shortened by virtue of questions that are answered.

(K) Any jurisdictional deadlines.

(2) For purposes of calculating the number of RFIs, each answer shall be considered a separate request for information.

(3) If a party is not required to answer a question, that question may not be included in the calculation of whether the propounding party has reached its limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question shall be included in the calculation of a propounding party's limit.

(4) To discourage duplicate RFIs, any party that does not use its entire allotment of RFIs directed toward another party may transfer, by written notice to the presiding officer, that portion of its allotment to any other party in the proceeding. The requirements of this paragraph do not apply to RFIs originating from the general counsel or directed to the general counsel.

(5) The presiding officer may use discretion in determining whether to limit the number of RFIs that may be propounded upon the general counsel or the Office of Public Utility Counsel by another party. In making this determination, the presiding officer shall consider the limited resources available to each agency, and specifically that the general counsel is required by law to represent the public interest in all proceedings before the commission.

(6) The presiding officer may limit or expand the number of RFIs that the general counsel may propound upon any other party, and shall consider that the general counsel is required by law to represent the public interest in all proceedings before the commission, and thus may require more questions than other parties to ensure that it adequately explores all of the issues presented in the case.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 13, 1996.

TRD-9613426

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Effective date: October 4, 1996

Proposal publication date: June 4, 1996

For further information, please call: (512) 458-0100



TITLE 22. EXAMINING BOARDS

Part XXXIV. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors.

The Texas State Board of Examiners of Professional Counselors (the board) adopts amendments to §§681.17, 681.51, 681.52, 681.62-681.64, 681.81-681.84, 681.92, 681.94, 681.96, 681.111, 681.122-681.125, 681.127, 681.171-681.179, 681.192, 681.195, and 681.198 concerning the regulation of professional counselors. Sections 681.51, 681.52, 681.62, 681.64, 681.92, 681.94, 681.123, 681.124, 681.173 and 681.176 are adopted with changes to the proposed text as published in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5520). Sections 681.17, 681.63, 681.81-681.84,

681.96, 681.111, 681.122, 681.125, 681.127, 681.171, 681.172, 681.174-681.175, 681.177-681.179, 681.192, 681.195, and 681.198 are adopted without changes and, therefore, will not be republished.

Specifically, the sections cover fees, required application materials, academic requirements, academic course content, temporary licenses, post-graduate experience requirements, supervisor requirements, other conditions of supervision, examination and procedures, license issuance, license surrender, license renewal, inactive status, active military duty, continuing education and requirements, acceptable continuing education, continuing education program approval, pre-approved continuing education providers, unacceptable continuing education, disciplinary action, complaint procedures, and informal disposition. The amendments allow applicants to pay a one time license fee at the time of application; establish a fee for the extension of a temporary license; delete the regular license fee; allow the board to require complete application packets; require deficiencies be completed within 45 days; clarify that the board can accept official transcripts submitted by the applicant in an unopened envelope from the university; delete the requirements for references; add language to implement provisions of Texas Civil Statutes, Article 4512g, which become effective September 1, 1996; require applicants to be responsible for knowledge of academic content areas for the examination; allow staff to evaluate transcripts for the total number of hours rather than specific content areas; delete references from the requirement for a temporary license; allow for an extension of the temporary license upon expiration of the first temporary license; delete reference to graduate degrees that are not counseling or counseling related; clarify language concerning approved supervisors and supervisor requirements; clarify language relating to other conditions for supervised experience; clarify examination process; clarify procedures for applicants to follow after failing the examination; delete requirement for applicants to schedule and take an examination within 90 days following the date of failure; allow applicants to submit score report forms and license fees at the same time; clarify language relating to staggered renewal process; allow licensees to submit only new information with annual renewal; delete language requiring board to issue an annual renewal card; clarify language relating to late renewal of a license; require persons on inactive status to renew that status annually; establish procedures for returning to active status; establish an annual reporting period for continuing education; change the continuing education requirements from 60 clock hours in a three year reporting period to 12 clock hours per year; allow more continuing education programs to be acceptable; establish a pre-approved provider program; establish an audit system for reporting continuing education; require licensees to maintain continuing education documents of attendance for two years; allow board to notify licensees or applicants of the opportunity to retain legal counsel prior to institution of formal disciplinary proceedings; and allow 15 working days for licensees to respond to correspondence relating to complaints.

The sections ensure the regulation of professional counselors continues to identify competent practitioners while streamlining all aspects of the licensing activities making the overall process less cumbersome for applicants and licensees. The following is a summary of comments received and the board's responses.

Comment: Concerning §681.17, one commenter expressed agreement with the establishment of a one-time application and licensure fee of \$90.

Response: The board agrees and no changes were made to the proposed text.

Comment: Concerning §681.51(a), one commenter stated opposition to the requirement that applicants must submit complete application packets because the practicum or internship supervisor who wants to include negative comments on the practicum form would not be comfortable in doing so.

Response: The board disagrees because it believes that the applicant should be counseled by the supervisor if there is a concern on the part of the supervisor about the skills, knowledge or abilities of an applicant. Additionally, the Public Information Act ultimately provides access of the document to the applicant.

Comment: Concerning §681.51(c), several commenters expressed agreement with the amendment, while several commenters were opposed to the board returning application packets not completed within 45 days. One commenter suggested 60 days rather than 45.

Response: The board disagrees because 45 days is sufficient time to make up any deficiencies of an incomplete packet. Deficiencies that take more than 45 days to fulfill indicate that the applicant was not ready to apply for licensure.

Comment: Concerning §681.52(e), one commenter suggested that allowing an applicant to provide a copy of a transcript "in an unopened college or university envelope" does not assure the transcript is official.

Response: The board agrees and has added language to clarify that all transcripts submitted must be official.

Comment: Concerning §681.62(f), several commenters expressed opposition to the deletion of the requirement that applicants must make a "B" or pass in courses taken outside of the graduate degree program.

Response: The board disagrees because those courses should not be treated differently than the coursework taken within the graduate degree plan. No change was made to the proposed text.

Comment: Concerning §681.62(g), staff noted that subsection (g) was inadvertently proposed for deletion.

Response: The board agrees and is not deleting subsection (g), (now subsection (f).)

Comment: Concerning §681.64(a), several commenters expressed opposition to changes in the way the staff processes and evaluates transcripts.

Response: The board disagrees and believes that the applicants should be responsible for ensuring adequate training in the content areas that are covered on the examination for licensure. The board will also provide notice to applicants of that responsibility. The board does believe, however, that the text of §681.64(a) should be clarified and has modified the language.

Comment: Concerning §681.123(d), several commenters opposed the deletion of an annual renewal card.

Response: The board agrees and is not deleting subsection (d).

Comment: Concerning §681.123(d)[(e)], one commenter suggested a three-year renewal cycle in line with the current continuing education reporting cycle.

Response: The board disagrees because Texas Civil Statutes, Article 4512g (the LPC Act) requires the annual renewal of a license and the board does not have the authority to change statutory requirements. (See final §681.123(e).)

Comment: Concerning §681.173, several commenters agreed with the requirement of three hours of ethics as part of the continuing education requirements for the renewal of a license.

Response: The board agrees and no change was made to the proposed text.

Comment: Concerning §681.173, several commenters favored the reduction in continuing education hours to 12 per year, while many persons opposed a reduction in continuing education hours to 12 hours and suggested 20 hours per year.

Response: The board agrees with the favorable comments and disagrees with the opposing comments because there is not sufficient evidence that requesting a specific number of continuing education hours assures continuing competency. In addition, the board believes the reduction in hours will greatly benefit licensees in rural areas who currently have difficulty obtaining and maintaining continuing education hours due to the fact that very few programs are made available in rural areas. No change was made to the text of the proposed amendment.

Comment: Concerning §681.174(a)(2)[(A)-(C)], several commenters opposed the deletion of specific requirements for presenters of continuing education programs. The current rules require presenters hold a license in a profession that has a master's degree as its minimum requirement.

Response: The board disagrees because a license does not guarantee a person's ability to present informative and accurate information. Additionally, the change to the rule will allow licensees to obtain credit for attending relevant and poignant presentations based on an individual's life experiences (i.e. holocaust survivors and their families, and victims). Licensees currently are unable to receive continuing education credit for these types of presentations. Subparagraphs (A)-(C) have been deleted as proposed.

Comment: Concerning §681.176, many commenters expressed agreement with the establishment of a pre-approved provider program. Many commenters also expressed opposition to the proposed amendments relating to the establishment of a pre-approved provider program.

Response: The board disagrees with the opposing comments because the pre-approved provider program will allow providers of continuing education to be approved annually to provide programs rather than requiring approval of individual programs.

Comment: Concerning §681.178, several commenters agreed with the reporting of continuing education through a random audit system. Several commenters opposed the reporting of continuing education through a random audit system.

Response: The board disagrees with the opposing viewpoint and believes that licensees will benefit by the audit system because it will result in a faster response time from the board for the renewal of licenses. No changes were made to the proposed text.

Editorial changes were made to §§681.51, 681.92, 681.94, 681.124, 681.173, and 681.176 for correction purposes.

Comments were received from Texas Counseling Association, Texas Mental Health Counselors Association, and the San Antonio Mental Health Counselors political action group. The commenters were generally in favor of the sections as amended; however, they expressed concerns regarding some of the changes as previously described.

Subchapter A. The Board

22 TAC 681.17

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613343

Tony Picchioni, Ph.D.

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: October 2, 1996

Proposal publication date: June 18, 1996

For further information, please call: (512) 458-7236



Subchapter D. Application Procedures

22 TAC §§681.51, 681.52

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.51. General.

(a) An applicant must submit a complete application packet and fee to the board. Complete applications packets will consist of the required application materials described in §681.52 of this title (relating to Required Application Materials).

(b) Incomplete application packets received by the board will be returned to the applicant without review. Fees associated with the application process are not refundable. Applicants may resubmit a

complete application packet without additional fee within 45 days of the date of notice of non-acceptance of the original application.

(c) Applicants submitting complete application packets, but which contain incomplete or unacceptable information will be notified of the specific deficiency in writing. A copy of each unacceptable document will be returned with this notice. Applicants will have 45 days from the date of the notice to resubmit corrected or replacement documents. Applications not corrected or completed within 45 days of notice of deficiencies will be void and application materials will be returned to the applicant. Fees associated with the application process are not refundable.

(d) After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§681.52. Required Application Materials.

(a)-(d) (No change.)

(e) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work or an official transcript may be attached to the application in an sealed envelope from the college or university.

(f) Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit:

(1) a general application form as set out in subsection (a) of this section and the provisional license fee;

(2) official documentation of licensure in another state or territory;

(3) official documentation that the applicant has passed a national examination relating to counseling or art therapy or an exam offered by another state or territory for licensure as a counselor or art therapist; and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling.

(g) Art therapy specialty designation.

(1) An applicant for a temporary or regular license with an art therapy specialty designation must submit evidence of the successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(2) An applicant for a temporary license with an art therapy specialty designation must submit:

(A) proof of current registration with the American Art Therapy Association; and

(B) proof that the applicant limits his or her scope of practice to art therapy at the time of application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613344

Tony Picchioni, Ph.D.

Chair

Texas State Board of Examiners of Professional Counselors

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For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter E. Academic Requirements for Examination and Licensure

22 TAC §§681.62-681.64

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.62. General.

(a)-(e) (No change.)

(f) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.

§681.64. Academic Course Content.

(a) An applicant is responsible for obtaining academic coursework in and demonstrating competency in the following specific areas through successful completion of the examination once the 2000 hour supervised experience requirement has been met:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through old age;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of professional counseling;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and

rural societies, population patterns, cultural patterns, and differing life styles; and

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention.

(b) The remaining courses needed to meet the 48 graduate-hour requirement shall be in areas directly supporting the development of an applicant's professional counseling skills such as practicum or internship credit and other courses related primarily to professional counseling.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tony Picchioni, Ph.D.

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For further information, please call: (512) 458-7236

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Subchapter F. Experience Requirements for Examination and Licensure

22 TAC §§681.81-681.84

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 458-7236

◆ ◆ ◆
Subchapter G. Licensure Examinations

22 TAC §§681.92, 681.94, 681.96

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional

Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.92. Applying for Licensure Examination.

(a) LPC interns must submit the following:

(1) an application for examination; and

(2) a supervised experience documentation form documenting successful completion of 2000 hours of supervised experience in accordance with §681.52(c) of this title (relating to Required Application Materials).

(b) Applicants for a regular license that do not hold a temporary license must apply for licensure in accordance with §681.51 of this title (relating to Application Procedures) and §681.52 of this title (relating to Required Application Materials).

(c) The Texas State Board of Examiners of Professional Counselors (board) shall provide written notification to applicants whose application for examination has been approved.

§681.94. Failures.

(a) An applicant who fails the licensure examination may schedule a second examination by submitting a copy of a failing score report and a written request for the second examination.

(b) (No change.)

(c) An applicant who fails any two successive examinations may not apply for a regular license until two years have elapsed from the date of the last examination or until the applicant has completed nine graduate semester-hours in the applicant's weakest portions of the examination. An application must be submitted in accordance with §681.51 of this title (relating to General) and §681.52 of this title (relating to Required Application Materials).

(d) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tony Picchioni, Ph.D.

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For further information, please call: (512) 458-7236



Subchapter H. Licensing

22 TAC §681.111

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education;

§14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512)458-7236



Subchapter I. Regular License Renewal and Inactive and Retirement Status

22 TAC §§681.122-681.125, 681.127

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.122. Staggered Renewals.

The Texas State Board of Examiners of Professional Counselors (board) shall use a staggered system for license renewals. The renewal date of a license shall be the last day of the licensee's birth month. If the birth month occurs less than 120 days from the date the license is issued, the expiration date shall be the time period less the 120 days plus one year.

§681.123. License Renewal.

(a) (No change.)

(b) Notice of license renewal shall be furnished to licensees eligible for renewal. The notice shall require the licensee to notify the board of any changes to information necessary to keep records current.

(c) The board shall not renew a license until it receives the renewal fee and the board form for reporting applicable continuing education requirements.

(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal. The licensee must display the renewal card in association with the license.

(e) The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(f) The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action

commences when the notice described in §681.192(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

(1)-(2) (No change.)

§681.124. Late Renewal.

(a)-(c) (No change.)

(d) A person whose license was not renewed on or within 90 days of the expiration date may renew within one year of the expiration date by paying the appropriate renewal fee plus the license renewal penalty fee. Payment may be in the form of a certified check or money order.

(e) If a person did not have the required continuing education at the time of expiration of the license, the person must file evidence of completion of the required continuing education before the license can be renewed.

(1) A license is considered expired until all requirements for renewal are met.

(2) Evidence of continuing education shall be the completed continuing education form and other documentation required by the board.

(3) The time period from expiration of the license until renewal of the license shall be subtracted from the next one-year continuing-education reporting period.

(f) On or after one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for license including passing the licensure examination.

§681.125. Inactive Status

(a) A licensee may place his or her license on inactive status for one year by submitting a written request prior to the expiration of the license along with the inactive fee. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. The licensee must renew the inactive status annually.

(b) (No change.)

(c) A person may not act as a counselor, represent himself or herself as a counselor, or provide counseling treatment intervention during the inactive status period.

(d)-(e) (No change.)

(f) A person must notify the board in writing to return to active status. Active status shall begin on the first day of the month following payment of applicable fees.

(g) The person's next continuing education cycle will begin upon return to active status and end on the last day of the person's birth month.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 11, 1996.

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Tony Picchioni, Ph.D.

Chair

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Subchapter K. Continuing Education Requirements

22 TAC §§681.171-681.179

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.173. Hour Requirements for Continuing Education.

A licensee must complete 12 clock-hours of continuing education acceptable to the Texas State Board of Examiners of Professional Counselors (board) during each 12 month period as described in §681.172 of this title (relating to Deadlines). At least three hours of the 12 hours must be directly related to counselor ethics or legal issues.

(1)-(2) (No change.)

§681.176. Pre-Approved Providers.

(a) Continuing education providers may apply for provider pre-approval to provide continuing education on forms provided by the board. Board approval of provider applications will be determined by review of the application and determination of applicants' ability to comply with board rules. Board pre-approvals are effective for twelve months from the date of board approval. New applications must be submitted to the board annually.

(1) Pre-approved providers of continuing education must comply with board requirements as set out in §681.174 of this title (relating to Types of Acceptable Continuing Education) and §681.177 of this title (relating to Determination of Clock-hour Credits).

(2) Pre-approved providers of continuing education must maintain records of all continuing education activities for a period of five years including:

- (A) resumes of all presenters;
- (B) complete course descriptions and objectives;
- (C) teaching methods employed;
- (D) attendance sheets for each course;
- (E) sample certificates of attendance; and

(F) evaluation documents from each participant for the specific experience.

(3) Failure to comply with board record keeping requirements or failure to comply with requirements of instructor or course qualifications is a violation of board rules and may result in termination of approval status or denial of renewal of pre-approved provider agreement. No documentation of continuing education is to be submitted to the board without written request.

(4) Pre-approved providers are subject to audit of all continuing education records upon written request by the board. Upon receipt of written notice of audit the provider will submit all requested records of continuing education to the board within ten working days. Failure to provide documentation as requested or submission of fraudulent documents will be a violation of board rules and may result in termination of approval status.

(5) Upon receipt and audit of documents submitted by the provider, the board will notify the provider of the results of the audit. The board may inform the provider of any corrective action deemed necessary to ensure future compliance with board rules, termination of current approval or deny future applications based on a finding of non-compliance with this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9613350

Tony Picchioni, Ph.D.

Chair

Texas State Board of Examiners of Professional Counselors

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For further information, please call: (512) 458-7236



Subchapter L. Complaint and Violations

22 TAC §§681.192, 681.195, 681.198

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(f) relating to rules concerning continuing education; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9613351

Tony Picchioni, Ph.D.

Chair

Texas State Board of Examiners of Professional Counselors

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Proposal publication date: June 18, 1996

For further information, please call: (512) 458-7236



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office adopts an amendment to §15.11, concerning certification of local government dune protection and beach access plans (plans), without changes to the proposed text as published in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5549). This amendment certifies that the Nueces County La Concha master plan is consistent with state law and organizes the General Land Office certifications of local government plans in §15.11.

On March 20, 1996, the Nueces County commissioners court adopted by order the La Concha master plan, which is an amendment to the county's plan. In the amendment to §15.11(f), the General Land Office certifies that the dune protection portion of the La Concha master plan is consistent with state law. For organizational purposes only, the certification is contained in §15.11(f) with the interim certification of the Nueces County plan.

The General Land Office has revised the composition of Chapter 15 in the amendment to §15.11(f) and simultaneously repealed §§15.70-15.79 to organize all certifications in §15.11. The reorganization has no substantive effect on Nueces County, other local governments, or citizens.

The General Land Office has prepared a takings impact assessment (TIA) for the adoption of this amendment. The General Land Office has determined that adoption of this amendment will not result in a taking of private real property. To receive a copy of the TIA, please send a written request to Cheli Cook, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495, facsimile number (512) 463-6311.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provides the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for any adverse effect on public access and dune areas. The amendment is also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 16, 1996.

TRD-9613525

Garry Mauro
Commissioner
General Land Office
Effective date: October 7, 1996
Proposal publication date: June 18, 1996
For further information, please call: (512) 305-9129



Subchapter E. Interim Approval of Local Government Dune Protection and Beach Access Plans

31 TAC §§15.70-15.71

The Texas General Land Office adopts the repeal of §§15.70-15.79, concerning the interim approval of local government dune protection and beach access plans (plans), without changes to the proposed text as published in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5550). The General Land Office's interim approval process was developed at the request of two jurisdictions, Nueces and Cameron counties, who desired authorization to develop and begin implementation of their local programs for dune protection and public beach use and access prior to the General Land Office's final adoption of the statewide Rules for Management of the Beach/Dune System (31 TAC §§15.1-15.10). A separate rule for interim approval of these two local plans is no longer needed. Cameron County has revised its beach/dune plan; that plan is now certified in §15.11(a)(11). Nueces County has revised its plan as well, and the county is working with the General Land Office to receive certification of the revised plan in §15.11. The General Land Office is ensuring that the Nueces County interim approval will not lapse by virtue of this repeal by simultaneously amending §15.11(f), which will now provide that the interim certification of the Nueces County plan, adopted by order of the Nueces County Commissioners Court on March 25, 1992, remains in effect and is not affected by the repeal.

The General Land Office has prepared a takings impact assessment (TIA) for the adoption of this amendment. The General Land Office has determined that adoption of this amendment will not result in a taking of private real property. To receive a copy of the TIA, please send a written request to Cheli Cook, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495, facsimile number (512) 463-6311.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provides the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for any adverse effect on public access and dune areas. The repeal is also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which

provides the General Land Office with the authority to adopt rules on coastal flood protection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 16, 1996.

TRD-9613528
Garry Mauro
Commissioner
General Land Office
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For further information, please call: (512) 305-9129



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 51. Executive

Use of Uninscribed Vehicles

31 TAC §51.151

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts new §51.151, concerning the Use of Uninscribed Vehicles, without changes to the proposed text as published in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5843).

The adopted new rule represents a recodification of rules in 31 TAC, Chapter 63, §§63.11-63.12, into 31 TAC Chapter 51 in accordance with the Parks and Wildlife Commission regulations sunset process.

New §51.151 authorizes the Executive Director to allow use of uninscribed vehicles by TPWD headquarters staff or law enforcement officers. The vehicles are proposed to be used primarily in law enforcement activities and shall be other than those used for routine activities. The repeal removes redundant sections from the Texas Administrative Code.

The department received no public comment concerning proposed new sections.

The new rule is adopted under Texas Transportation Code, §721.003, which provides the Parks and Wildlife Commission with authority to allow use of uninscribed vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613355
William D. Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

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Proposal publication date: June 25, 1996
For further information, please call: 1 (800) 792-1112 Ext. 4642 or
(512) 389-4642



Chapter 55. Law Enforcement

Subchapter J. Mandatory Hunter Education Program

31 TAC §§55.603, 55.605, 55.607, 55.609

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts new §§55.603, 55.605, 55.607 and 55.609, concerning Mandatory Hunter Education Program, without changes to the proposed text as published in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5845). Proposed §55.601, concerning Definitions, was not adopted by the Commission. Further review of the proposal found that this section was not necessary. The new rules represent simplification, clarification reduction of regulations concerning required hunter education.

Parks and Wildlife Code Chapter 62, Subchapter A, provides authority to the Parks and Wildlife Commission for establishing a Hunter Education Program.

Adoption of these new rules represents a recodification and simplification of current rules which implement the Hunter Education Program.

The department received no public comment concerning the proposed new sections.

The new sections are adopted under Parks and Wildlife Code, §62.014 which provides the commission authority to administer and establish a statewide hunter education program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613356
William D. Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
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Proposal publication date: June 25, 1996
For further information, please call: 1 (800) 792-1112 Ext. 4642 or
(512) 389-4642



Chapter 57. Fisheries

Issuance of Oyster Transplant and Harvest Permits

31 TAC §§57.231-57.233

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals of §§57.231-57.233, concerning Issuance of Oyster Transplant and Harvest Permits, without changes to the proposed text as

published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6991).

The repeals represent part of the recodification and simplification of rules concerning oysters as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning oysters are recodified in new 31 TAC, Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of the sections.

The repeals are adopted under authority of Parks and Wildlife Code, Chapter 76, Oysters, §§76.301-76.302, which provides the Commission with authority to establish oyster regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613357
William D. Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: October 3, 1996
Proposal publication date: July 26, 1996
For further information, please call: 1 (800) 792-1112 Ext. 4642 or
(512) 389-4642



Issuance of Oyster Leases

31 TAC §§57.241-57.242, 57.245

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals of §§57.241-57.242, and 57.245, concerning Issuance of Oyster Leases, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6991).

The repeals represent part of the recodification and simplification of rules concerning oysters as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning oysters are recodified in new 31 TAC, Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of the sections.

The repeals are adopted under authority of Parks and Wildlife Code, Chapter 76, Oysters, §§76.301-76.302, which provides the Commission with authority to establish oyster regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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Proposal publication date: July 26, 1996

For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



Collection of Broodfish from Texas Waters

31 TAC §§57.391-57.402

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals of §§57.391-57.402 and new §§57.391-57.396 and §§57.398-57.401, concerning collection of broodfish from public waters, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6992). Proposed §57.397 was adopted with change. Proposed §57.397(b) was not adopted by the Commission as this paragraph was deemed redundant.

The adopted repeals and new rules are necessary to protect aquatic life in the public waters of Texas.

The adopted repeals and new rules provide criteria for taking of broodfish from the public waters of Texas for use in aquaculture activities.

The department received no public comment concerning the proposed repeals and new sections.

The repeals are adopted under Parks and Wildlife Code, Chapter 43, Subchapter P, which gives the commission authority to regulate the collection of broodfish from public waters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613361

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: October 3, 1996

Proposal publication date: July 26, 1996

For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



31 TAC §§57.391-57.401

The new rules are adopted under Parks and Wildlife Code, Chapter 43, Subchapter P, which gives the commission authority to regulate the collection of broodfish from public waters.

§57.397. Broodfish Permit; Revocation.

The director may revoke a broodfish permit upon finding that a permittee or his agent:

(1) does not hold a valid aquaculture (fish farming) license issued by the Texas Department of Agriculture;

(2) does not hold a valid sportfishing license while collecting in all public waters of this state in addition to a saltwater stamp in public salt water;

(3) has violated any provision of that broodfish permit;

(4) fails to report, as required in §57.401 of this title (relating to Reports), the number and sizes of broodfish collected;

(5) provides false information in a broodfish report; or

(6) fails to remit to the department within 30 days of broodfish collection all restitution fees assessed to the permittee for recovery of the value of broodfish collected.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



Texas Oyster Management Plan and Economic Impact Analysis

31 TAC §57.601

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeal to §57.601, concerning Fishery Management Plan for Oysters in Texas and Economic Impact Analysis, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6994).

The repeals represent part of the recodification and simplification of rules concerning oysters as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning oysters are recodified in new 31 TAC, Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of the section.

The repeal is adopted under authority of Parks and Wildlife Code, Chapter 76, Oysters, §§76.301-76.302, which provides the Commission with authority to establish oyster regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613363

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department
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Proposal publication date: July 26, 1996
For further information, please call: 1 (800) 792-1112 Ext. 4642 or
(512) 389-4642

◆ ◆ ◆
Oyster Harvest

31 TAC §§57.610-57.611

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals to §§57.610-57.611, concerning Oyster Harvest, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6994).

The repeals represent part of the recodification and simplification of rules concerning oysters as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning oysters are recodified in new 31 TAC, Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of the sections.

The repeals are adopted under authority of Parks and Wildlife Code, Chapter 76, Oysters, §§76.301-76.302, which provides the Commission with authority to establish oyster regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or
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◆ ◆ ◆
Texas Shrimp Fishery Management Plan Economic Impact Analysis

31 TAC §57.651

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeal to §57.651, concerning Texas Shrimp Fishery Management Plan and Economic Impact Analysis, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6995).

The repeals represent part of the recodification and simplification of rules concerning shrimp as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning shrimp are recodified in new 31 TAC Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of the section.

The repeal is adopted under authority of Parks and Wildlife Code, §77.007, which provides the Commission with authority to establish shrimp regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.
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For further information, please call: 1 (800) 792-1112 Ext. 4642 or
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◆ ◆ ◆
Shrimp

31 TAC §§57.660-57.662

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals to §§57.660-57.662, concerning Shrimp, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6995).

The repeals represent part of the recodification and simplification of rules concerning shrimp as part of the Parks and Wildlife Commission regulations sunset process. Regulations concerning shrimp are recodified in new 31 TAC Chapter 58.

The repeals remove redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeal of these sections.

The repeals are adopted under authority of Parks and Wildlife Code, Chapter 77, Shrimp, §§77.061-77.072, which provides the Commission with authority to establish shrimp regulations for this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.
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For further information, please call: 1 (800) 792-1112 Ext. 4642 or
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Chapter 58. Oysters and Shrimp

Subchapter A. State Oyster Fishery Proclamation

31 TAC §§58.10-58.12, 58.21-58.24, 58.30, 58.40, 58.50, 58.60

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing August 29, 1996, adopts new §§58.10-58.12, 58.21-58.24, 58.30, 58.40, 58.50 and 58.60, concerning Statewide Oyster Fishery Proclamation. Sections 58.10, 58.12, 58.24, 58.40, 58.50 and 58.60 are adopted without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6996). Sections 58.11, 58.21, 58.22, 58.23 and 58.30 are adopted with changes to the proposed text as published. The adopted changes resulted from public comments received by the Department.

Amendments in §58.11 in the definition of "Conditionally approved area," the term "closed" is replaced with the term "restricted" to be consistent with Texas Department of Health terminology for Conditionally approved areas; in §58.21(b) paragraphs §58.21(b)(2)-(4) are reordered to clarify rules, and paragraph §58.21(b)(2) is reworded to clarify the intent that oysters between 3/4 inch and three inches must be returned to the reef; §58.22(a)(4) is added to allow multiple dredges on board a commercial oyster boat during public oyster season, but requires they be secured in such a manner as not to be readily accessible for use; §58.23(a)(3) is added to allow multiple dredges on board a non-commercial oyster boat during public oyster season, but requires they be secured in such a manner as not to be readily accessible for use; in §58.30(a)(1) and §58.30(a)(4) were deleted since these provisions fall solely under legislative authority, and section is renumbered accordingly; in §58.30(d)(1)(B)-(C) and §58.30(d)(3), the requirement that all lease marker buoys be identified by GPS coordinates is replaced with the requirement that all lease marker buoys be identified by Loran coordinates; additionally, minor errors and omissions have been corrected.

The rules and amendments as adopted implement regulatory changes as authorized under Parks and Wildlife Code, Chapter 76 whereby the 71st Legislature gave the Commission authority to regulate by proclamation the taking, purchase, and sale of oysters. A proclamation issued under this authority may limit the quantity and size of oysters that may be taken, possessed, sold or purchased and may prescribe times, places, conditions, and means and manner of taking oysters.

The new sections will function by implementing statutory duty of the department to: (1) prevent the depletion of oyster beds while achieving, on a continuing basis, the optimum yield for the oyster industry; (2) provide measures based on the best scientific information available; (3) provide measures to manage oysters; (4) provide measures, where practicable, that will promote efficiency in utilizing oyster resources, except that economic allocation may not be the sole purpose of the measures; (5) provide measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and (6) provide measures which will enhance enforcement.

During the 30-day comment period, staff received comments from members of the Department's Oyster Advisory Committee. Comments were incorporated as amendments to the original proposed proclamation. The Department's Oyster Advisory Committee unanimously supported the proclamation and amendments. No other comments were received.

No individuals representing groups other than the Department's Oyster Advisory Committee made comments for or against either the proposed rules or the amendments during the regularly scheduled public hearing.

Staff agrees with comments provided by the members of the Department's Oyster Advisory Committee.

The new sections are adopted under authority of Parks and Wildlife Code, Chapter 76, Oysters, §§76.301-76.302, which provides the Commission with authority to establish oyster regulations for this state.

§58.11. Definitions.

The following words and terms, when used in the subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Approved area- A molluscan shellfish growing area determined to be acceptable for harvesting of molluscan shellfish for direct marketing according to the National Shellfish Sanitation Program (NSSP).

Barrel of oysters- A barrel of oysters is equal to three boxes (bushels) of oysters in the shell. The dimensions of a box are 10 inches by 20 inches by 13 1/2 inches. In filling a box for measurement the oysters may not be piled more than 2 1/2 inches above the height of the box at the center. Two gallons of shucked oysters without shells equals one barrel of oysters in the shell.

Conditionally approved area- The classification of a shellfish growing area determined by the Texas Department of Health Seafood Safety Division to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a restricted area when the area does not meet the approved growing area criteria.

Commission- Refers to the nine member Texas Parks and Wildlife Department Commission.

Department- Refers to the Texas Parks and Wildlife Department.

Natural oyster bed (reef)- A natural oyster bed exists when at least five barrels of oysters are found within 2,500 square feet of any position on a reef.

Oyster- That species of molluscan shellfish identified as the Eastern oyster, *Crassostrea virginica* and its subspecies. No other species of molluscan shellfish are included within this proclamation.

Possess- The act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as an agent, bailee, or custodian of another.

Private oyster lease- Those state water bottoms leased from the state for the purpose of producing oysters to individuals or corporations incorporated under the laws of this state.

Prohibited area- The classification of a shellfish growing area determined by the Texas Department of Health Seafood Safety Division to be unacceptable for the transplanting, gathering for

depuration, or harvesting of shellfish. The only shellfish removal permitted from a prohibited area is for the purpose of depletion, as defined in the Control of Harvesting Section of Part 1 of the NSSP.

Public oyster bed (reef)- All natural oyster beds (reefs) are public. All oyster beds not designated as private are public.

Restricted area- The classification of a shellfish growing area determined by the Texas Department of Health Seafood Safety Division to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the Seafood Safety Division determines that the area does not meet the restricted area criteria established in the NSSP.

§58.21. Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

(a) Seasons and Times.

(1) The open season extends from November 1 of one year through April 30 of the following year.

(2) Legal oystering hours - sunrise to sunset.

(b) Size Limits and Possession of Undersized Oysters.

(1) Size limit - Legal oysters must be three inches or larger as measured along the greatest length of the shell.

(2) Oysters which are between 3/4 inch and three inches in length must be returned to the reef at the time of harvest.

(3) Unculled oysters shall be kept separate from culled oysters.

(4) It is unlawful for any person to take or possess a cargo of oysters more than 15% of which are between 3/4 inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

(c) Area Closures. There is no open public season for oysters from areas declared to be restricted or prohibited by the Texas Department of Health or areas closed by the Commission.

§58.22. Commercial Fishing.

(a) Gear Restrictions. It is unlawful while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to:

(1) use more than one dredge;

(2) use a dredge which exceeds 48 inches in width and a two-barrel capacity;

(3) have more than one dredge connected in any manner to a winch, chain or other lifting device during the open public season; or

(4) have on board any dredge(s), other than the one connected to a winch, chain, or other lifting device, unless secured below deck, to or on the wheelhouse, or to the deck in such a manner as to not be readily accessible for use.

(b) Possession Limits. It is unlawful while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to have on board any licensed commercial oyster boat:

(1) more than 50 barrels of culled oysters of legal size; or

(2) more than 2 barrels of uncultured oysters while on the reef.

(c) Reporting requirements. A dealer who purchases or receives oysters directly from any person other than a licensed dealer must file a report with the department each month as prescribed under Parks and Wildlife Code, §66.019(c).

§58.23. Non-Commercial (Recreational) Fishing.

(a) Gear Restrictions. It is unlawful while taking or attempting to take oysters for personal use to:

(1) use a dredge that exceeds 14 inches in width; or

(2) have more than one dredge connected in any manner to a winch, chain or other lifting device during the open public season; or

(3) have on board any dredge(s), other than the one connected to a winch, chain, or other lifting device, unless secured below deck, to or on the wheelhouse, or to the deck in such a manner as to not be readily accessible for use.

(b) Possession Limit. It is unlawful to take or possess more than two bushels of legal sized oysters per person.

(c) Prohibition of Sale. It is unlawful to sell oysters taken without a valid commercial oyster fishing license.

§58.30. Private Oyster Leases.

(a) General Rules.

(1) Leases will not be granted on areas determined to be natural oyster beds or that have been publicly fished within eight years of the lease application.

(2) No permit will be issued for a lease on:

(A) a natural oyster bed;

(B) a bay shore area within 100 yards of the shore;

(C) an area subject to an exclusive riparian right as provided under Parks and Wildlife Code §76.004 and §76.005;

(D) an area already under certification as a private lease; or

(E) an area within 1,000 feet of an established lease not owned or controlled by the applicant.

(3) The failure to pay any rental when due terminates the lease.

(b) Application For Oyster Lease.

(1) All applications for private oyster leases will be submitted to the department for consideration and shall be accompanied by a non refundable application fee of \$20.

(2) The applicant shall mark the proposed lease site or sites with temporary poles and/or buoys in such a manner that the outline of the site or sites can be clearly determined.

(3) Each application shall contain:

(A) applicant's name and address;

(B) affirmation that applicant is a United States citizen;

(C) a description of the lease, including a plat showing approximate size and location in relation to state land tracts; and

(D) signed letters each from the U.S. Army Corps of Engineers, General Land Office, and the Seafood Safety Division of the Texas Department of Health indicating approval for the proposed lease site.

(4) An authorized employee(s) of the department shall inspect the proposed lease site or sites to determine its location with respect to:

(A) natural oyster reefs;

(B) shoreline;

(C) areas restricted or prohibited by the Texas Department of Health;

(D) spoil disposal areas;

(E) other private leases; and

(F) riparian rights.

(5) An authorized employee(s) of the department shall inspect the proposed lease site or sites to determine the presence of exposed shell.

(6) If exposed shell is found within the proposed lease site or sites, an authorized employee(s) of the department shall determine the presence of live oysters.

(c) Public Hearing on Application.

(1) After having determined the proposed lease site meets location and exposed shell requirements, the department shall:

(A) hold a public hearing to determine if the site has been publicly fished within eight years of the lease application;

(B) publish a notification of the date, time, and purpose of the public hearing at least once in a newspaper of general circulation in the county in which the proposed lease site is located;

(C) publish the notification between 10 and 20 days prior to the public hearing;

(D) make available to the public information about the proposed lease site ten days prior to the date of the hearing; and

(E) present the investigation report at the public hearing.

(2) Persons objecting to the proposed lease must submit a sworn affidavit or testify under oath at the public hearing stating reasons for the objection.

(3) The department shall review findings of the public hearing and submit recommendations to the Coastal Fisheries Division Director for approval.

(4) The applicant will be notified within ten days after the hearing of either approval or denial of lease application.

(5) The application approved by the department will be forwarded to the Coastal Coordination Council for final approval.

(d) Approved Lease Procedures for Applicant.

(1) Applicant shall be responsible for having a final survey of the approved lease conducted by a registered surveyor who will furnish the department with survey notes and a plat of the lease showing:

(A) the location of the lease in relation to state land tract boundaries; and

(B) Loran coordinates for all lease markers.

(2) The applicant shall mark the boundaries of the lease with buoys at the time of the final survey and maintain buoys until lease termination. Supplemental markers may be required along the lease boundaries if one corner marker is not clearly visible from another corner marker.

(A) All marker buoys must be:

(i) at least six inches in diameter;

(ii) at least three feet out of the water at mean high tide;

(iii) of a shape and color that is visible for at least 1/2 mile under normal weather conditions;

(iv) marked with the lease number (Buoys common to two or more leases must be marked with all lease numbers);

(v) marked with at least two-inch high letters in plain Arabic block letters in a location where it will not be obscured by water or marine growth; and

(vi) marked with all required U.S. Coast Guard markings.

(B) Buoys must be anchored by:

(i) A screw anchor with a minimum one-inch galvanized sucker rod and 12-inch head inserted 10 feet into the bottom; or

(ii) two anchors per buoy and each anchor having a minimum weight of 300 pounds.

(C) If replacement of buoys is necessary, original Loran coordinates of the final survey must be used to relocate markers.

(3) An authorized employee(s) of the department shall inspect and verify Loran coordinates;

(4) The department shall return approved application for appropriate registration by applicant with the county clerk in the county of location as prescribed in Parks and Wildlife Code, §76.014.

(5) Rental Fee.

(A) No rental fee is owed on any lease when oysters are not sold or marketed from the lease for a period of five years after the date of the establishment of the lease.

(B) When oysters are sold or marketed from the lease and thereafter, the holder of the certificate shall pay to the department \$3.00 per acre of lease per year.

(C) Rental fees are due annually by March 1.

(D) Failure to pay any rental when due terminates the lease.

(E) If oysters from the lease are not sold or marketed within five years from the date of establishment of the lease, the lease is void.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or
(512) 389-4642

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Subchapter B. Statewide Shrimp Fishery Proclamation

31 TAC §§58.101-58.104, 58.130, 58.150, 58.160-58.165

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing August 29, 1996, adopts new §§58.101-58.104, 58.130, 58.150, 58.160-58.165, concerning Statewide Shrimp Fishery Proclamation. Sections 58.101-58.104, 58.130, 58.150, 58.160-58.165, were adopted without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7001), while §58.130 was adopted with changes. The adopted changes were as a result of public comment received by the Department.

The amendments in §58.130(b)(1) include new language which establishes the number of license buyback periods is limited to the funds available; in §58.130(d)(3)(E), new language clarifies that Established Maximum Value criteria will include bid offers from previous application periods; and in §58.130(g)(2), new language clarifies intent by stating qualified designated agents may utilize Maximum Value Criteria established by these rules.

The rules and amendments as adopted implement regulatory changes as authorized under Parks and Wildlife Code, Chapter 77 whereby the 71st Legislature gave the Commission authority to regulate by proclamation the taking, possession, purchase, and sale of shrimp. A proclamation issued under this authority may limit the quantity and size of shrimp that may be taken, possessed, sold or purchased and may prescribe times, places, conditions, and means and manner of taking shrimp. In addition, under Parks and Wildlife Code, Chapter 77, the 74th Legislature gave the Commission authority to establish criteria by which the Department selects commercial bay shrimp boat and commercial bait shrimp boat licenses for purchase under a voluntary license buyback program.

The new sections will function by implementing statutory duty of the department to: (1) prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery; (2) provide measures based on the best scientific information available; (3) provide measures to manage shrimp throughout their range; (4) provide measures, where practicable, that will promote efficiency in utilizing shrimp resources, except that economic allocation may not be the sole purpose of the measures; (5) provide measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and (6) provide measures which will enhance enforcement.

During the 30-day comment period, staff received comments from members of the Department's Shrimp Advisory Committee, and the Limited Entry Review Board. Comments were incorporated as amendments to the original proposed proclamation. Both the Department's Shrimp Advisory Committee and Limited Entry Review Board unanimously supported the proclamation and amendments. No other comments were received.

No individuals representing groups other than the Department's Shrimp Advisory Committee and the Limited Entry Review Board made comments for or against either the proposed rules or the amendments during the regularly scheduled public hearing.

Staff agrees with comments provided by members of the Department's Shrimp Advisory Committee, and the Limited Entry Review Board.

The new sections are adopted under authority of Parks and Wildlife Code, §77.007, which provides the Commission with authority to establish shrimp regulations for this state, and §77.119, which provides the Commission with authority to implement a license buyback program.

§58.130. *Shrimp License Buyback Program.*

(a) Delegation of Authority. The commission delegates power and authority to the executive director to administer the Shrimp License Buyback Program.

(b) License Buyback Bid Application Period.

(1) The department will open one or more license buyback bid offer application periods (hereafter referred to as application) per license year if available funds permit.

(2) The department shall establish during each application period a deadline for receipt of all applications.

(c) License Buyback Application Requirements.

(1) The department shall consider all applications to the Shrimp License Buyback Program provided the applicants meet the following requirements :

(A) A completed License Buyback Application form furnished by the department has been submitted to the department by the application deadline;

(B) The applicant is the owner of the license submitted for buyback; and

(C) The applicant has submitted to the department copies of all supplemental information as required in this subsection.

(2) A completed License Buyback Application shall contain:

(A) full name of the applicant;

(B) current address of applicant's residence;

(C) social security number of applicant;

(D) a copy of legal documentation that:

(i) documents applicant as the sole owner of the vessel and holds the sole rights and privileges to the license; or

(ii) documents that all members of a partnership or corporation are in agreement to apply to the license buyback program and the submitted bid offer for license buyback;

(E) USCG vessel documentation number or State of Texas registration number;

(F) a copy of current commercial bay and/or bait shrimp boat license; and

(G) the applicant's bid offer, in U.S. dollars.

(3) Department records will be used to verify all information supplied by or pertaining to the applicant's history in the shrimp fishery or will be used in cases where the applicant has not provided adequate information for proper consideration of the application.

(4) Applications received after the established application deadline shall be held for consideration during the next bid offer application period.

(d) Established Maximum Value Criteria.

(1) The department may establish each license year criteria which will be used as appropriate to assign an Established Maximum Value to each application.

(2) The department will assign an Established Maximum Value to each application according to criteria provided in this section.

(3) The Established Maximum Value for each application will be based on the following criteria:

(A) length of vessel;

(B) duration of license in fishery prior to enactment of Parks and Wildlife Code, §§77.117-77.123;

(C) amount of funds accumulated in the Shrimp License Buyback Account;

(D) number of bay and bait licenses in the fishery issued in the license year of the specific bid offer application period;

(E) bid offers from previous application periods;

(F) established open market prices for licenses;

(G) number of licenses offered for sale by applicant; and

(H) other relevant factors.

(4) Adjustments to Established Maximum Value: If an applicant offers both a commercial bay shrimp license and a commercial bait shrimp license issued for the same vessel, the department will add a premium of 7.5% to the Established Maximum Value of each license offered.

(e) Application Ranking Procedures.

(1) Ranking values will be assigned to all applications based on the greatest difference between the Established Maximum Value and the bid offers which are less than the Established Maximum Value.

(2) The department will purchase licenses beginning with the highest ranking to the lowest.

(3) Equally ranked bid offers:

(A) If bid offers are equally ranked and one vessel is larger in length, the department will rank the larger vessel ahead of the smaller;

(B) If bid offers are equally ranked and both vessels are the same length, the department will rank according to the ascending alphabetical order of the applicant's last name.

(4) The department may purchase licenses from applicants whose offers fall within 10% of the Established Market Value and are greater than the Established Market Value.

(f) Notification of Acceptance or Rejection of Application.

(1) Department will notify each applicant in writing within 45 days of receipt of application regarding acceptance or rejection of application bid offer.

(2) Applicants whose bids are accepted must then notify the department of their intent to accept or reject the offer from the department within 15 days of the postmark of the notification letter sent by the department.

(3) The department may retain unsuccessful applications and include them in the next application period.

(4) The unsuccessful applicant may withdraw, resubmit, or amend an application for consideration during any future application periods.

(5) The department will continue to purchase in rank order as the buyback fund permits.

(g) Delegation of purchasing authority.

(1) The department may designate other qualified agents to purchase licenses on behalf of the department provided all purchased licenses are surrendered to the department and retired.

(2) The designated qualified agents may utilize the Maximum Value Criteria established in subsection (d) this section to purchase licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



Chapter 63. Administration

Mandatory Hunter Education Program

31 TAC §§63.5-63.9

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals to §§63.5-63.9, concerning Mandatory Hunter Education Program, without changes to the proposed text as published in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5846).

Parks and Wildlife Code Chapter 62, Subchapter B, provides authority to the Parks and Wildlife Commission for establishing a Hunter Education Program. This repeal of rules is part of the Parks and Wildlife Commission regulations sunset process. The repealed sections were recodified in 31 TAC, Chapter 55, concerning Law Enforcement.

Adoption of the repealed rules represents a recodification and simplification of current rules which implement the Hunter Education Program.

The department received no public comment concerning the proposed repeal of these sections.

The repeals are adopted under Parks and Wildlife Code, §62.014, which provides the commission authority to administer and establish a statewide hunter education program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



Use of Uninscribed Vehicles

31 TAC §§63.11-63.12

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals to §§63.11-63.12, concerning the Use of Uninscribed Vehicles, without changes to the proposed text as published in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5847).

The repeals represents a recodification of rules in 31 TAC, Chapter 63, §§63.11-63.12 into 31 TAC Chapter 51 in accordance with the Parks and Wildlife Commission regulations sunset.

The repeal removes redundant sections from the Texas Administrative Code.

The department received no public comment concerning the proposed repeals.

The repeals are adopted under Texas Transportation Code, §721.003, which provides the Parks and Wildlife Commission with authority to allow use of uninscribed vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

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For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



Chapter 65. Wildlife

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held August 29, 1996, adopts the repeals to §§65.400-65.406 and new §65.401, concerning Deer Antlers, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7014).

The repeals and new section are necessary to eliminate outdated and unnecessary regulations.

The repeals and new section will function by removing burdensome restrictions on the possession and sale of deer antlers.

The department received no public comment concerning the proposed repeals and new sections.

Subchapter R. Deer Antlers

31 TAC §§65.400-65.406

The repeals and new sections are adopted under Parks and Wildlife Code, Chapter 62, Subchapter B, which provides the Commission with the authority to establish regulations governing the sale, purchase, and possession of deer antlers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613374

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: October 3, 1996

Proposal publication date: July 26, 1996

For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



31 TAC §65.401

The new section is adopted under Parks and Wildlife Code, Chapter 62, Subchapter B, which provides the Commission with the authority to establish regulations governing the sale, purchase, and possession of deer antlers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 11, 1996.

TRD-9613375

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: October 3, 1996

Proposal publication date: July 26, 1996

For further information, please call: 1 (800) 792-1112 Ext. 4642 or (512) 389-4642



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Exempt Filing Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L, Article 5.96

The Commissioner of Insurance, at a public hearing under Docket Number 2243 held at 9:00 a.m., September 11, 1996, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1996 and 1997 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition entitled "Second Petition..." (Reference Number A-0796-29-I) was published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7426-7427).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0796-29-I, which are incorporated by reference into Commissioner's Order Number 96-1076.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613655

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 23, 1996

Filed: September 18, 1996

Exempt Filing Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L, Article 5.96

The Commissioner of Insurance, at a public hearing under Docket Number 2242 held at 9:00 a.m., September 11, 1996, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1996 and 1997 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0796-28-I) was published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7426).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0796-28-I, which are incorporated by reference into Commissioner's Order Number 96-1077.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613657

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 23, 1996

Filed: September 18, 1996

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction deadline	Destruction Method (also see footnotes)
1	Feb. 1 - March 31	September <etb>30<et> [15]	shred and plow a,b
2 - Area 1	No dates set	September 10	shred and plow a,b
2 - Area 2	No dates set	September 20	shred and plow a,b
2 - Area 3	No dates set	September 25	shred and plow a,b
2 - Area 4	No dates set	October 1	shred and plow a,b
3 - Area 1	March 5 - May 15	October 1	shred and plow a,b
3 - Area 2	March 5 - May 15	October 15	shred and plow a,b
4	No dates set	October 10	shred and plow a,b
5	No dates set	October 20	shred and/or plow a,c
6	No dates set	October 31	shred and/or plow a,c
7	March 20 - May 31	November 30	shred and/or plow a,c,d
8	March 20 - May 31	November 30	shred and/or plow a,c
9	No dates set	February 1	shred and plow b,e
10	No dates set	February 1	shred and plow b,e

a/ Alternative destruction methods are allowed (see paragraph (b));

b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

c/ Destruction shall periodically be performed to prevent presence of fruiting structures.

d/ Destruction method in Houston County only will be shred and plow.

e/ Soil shall be tilled to a depth of 2 or more inches in Zone 9, and to a depth of 6 or more inches in Zone 10.

Figure: 34 TAC 3.78(d)(9)

STATE OF TEXAS
MOTOR VEHICLE RENTAL TAX
DIRECT PAYMENT EXEMPTION CERTIFICATE

Direct Payment Authorization Number: _____

The undersigned hereby claims exemption from the payment of the motor vehicle rental tax on its rental of motor vehicles from:

This certificate will remain in effect until the motor vehicle owner named above is otherwise notified.

This Exemption Certificate Does Not Cover:

- (1) Rentals of motor vehicles to be re-rented.
- (2) Rentals to any person other than the permit holder.
- (3) Sales or rentals of tangible personal property subject to the Limited Sales, Excise and Use Tax (Texas Tax Code Chapter 151).
- (4) Purchases of motor vehicles.
- (5) Leases of motor vehicles.

The permit holder agrees not to allow others (including related corporations, contractors or repairmen) to use the undersigned direct payment authorization to rent motor vehicles tax free.

The undersigned agrees to accrue and pay the tax to the Comptroller of Public Accounts as required by statute.

Permit Holder: _____

Authorized Signature: _____

Effective Date: _____

Figure: 34 TAC 3.162(a)(2)

Example

Charge for room occupancy	\$37.50
Television rental	2.50
Total	\$40.00 (amount subject to tax)

Charge for room occupancy	\$40.00
(includes use of a television	
Total	\$40.00 (amount subject to tax)

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, September 26, 1996, 10:00 a.m.

Harris County Extension Center, #2 Abercrombie Drive
Houston

Texas Rice Producers Board

AGENDA:

Call to Order, Approve Minutes of Previous Meeting

Discussion and Action: 1995–96 Final Year-End Financial Report of Current Fiscal Year; Review Current Budget and Make Adjustments, if necessary; Follow-up from Last Meeting on Administration Proposals for Texas Rice Industry Organizations; Information Regarding Non-refundable State Checkoff for Rice.

Other Business

Adjourn

Contact: Mr. Curtis Leonhardt, Texas Rice Producer's Board, P.O. Box 740250, Houston, Texas 77274, 1–800–888–7423.

Filed: September 17, 1996, 10:50 a.m.

TRD-9613598



Texas Commission on Alcohol and Drug Abuse (TCADA)

Thursday, September 26, 1996, 10:00 a.m.

Rio Grande High School, Ft. Ringgold

Rio Grande City

Regional Advisory Consortium, (RAC), Region 11

AGENDA:

Call to order; roll call; introduction of visitors; reading and approval of minutes; old business: membership, officer nominees, vacant slot

planning Region #21 (Valley); new business: communications: field representative, RAC members, general public; and adjournment.

Contact: Miguel Lopez, Field Representative, TCADA, 3804 Casa Blanca Road, Laredo, Texas 78041, (210) 718–0297.

Filed: September 18, 1996, 9:01 a.m.

TRD-9613635



Friday, October 4, 1996, 10:00 a.m.

11307 Roszell, Suite 2607, Department of Human Services, Regional Administration Building

San Antonio

Regional Advisory Consortium, (RAC), Region 8

AGENDA:

Call to order; review/comment of Region 8 RAC report to the Commission; review/comment on goal 4...“Examine funding process/determine methods for improvement”; review of officer's terms; nominations for vacant RAC slots; discussion on pros/cons of RAC functions, proceedings after one year; new business; schedule next meeting; and adjournment.

Contact: Blas Lopez, Field Representative, TCADA, P.O. Box 23990, San Antonio, Texas 78223–9988, (210) 619–8039.

Filed: September 18, 1996, 9:01 a.m.

TRD-9613634



Texas Bond Review Board

Tuesday, September 24, 1996, 10:00 a.m.

Capitol Extension, Room E2.016, 1400 Congress

Austin

Planning Session

AGENDA:

I. Call to Order

II. Approval of Minutes

III. Consideration of Proposed Issues

A. Public Utilities Commission — Lease purchase of electronic access equipment

B. Texas Public Finance Authority- General Obligation and Refunding Bonds, Series 1996C, (Texas Juvenile Probation Commission)

C. Texas Department of Housing and Community Affairs — Junior Lien Single Family Mortgage Revenue Bonds, 1996 Series A and B (Colonias)

D. Texas Department of Housing and Community Affairs— Single Family Mortgage Revenue Bonds, 1996 Series D¹

E. Texas Department of Housing and Community Affairs — Single Family Mortgage Revenue Refunding Bonds, 1996 Series E¹

F. Texas Department of Housing and Community Affairs — Taxable Single Family Mortgage Revenue Refunding Bonds, 1996 Series F¹

IV. Adjourn

¹including in connection therewith a line of credit to Texas State Affordable Housing Corporation.

Contact: Albert L. Bacarisse, Executive Director, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741

Filed: September 16, 1996, 1:48 p.m.

TRD-9613556



State Board of Dental Examiners

Friday, September 27, 1996, 8:00 a.m. until conclusion

333 Guadalupe, William Hobby Building, Tower 2, Room II-225, 2nd floor

Austin

Board Meeting

AGENDA:

I. Call to Order

II. Roll Call

III. Executive Session to Discuss Pending Litigation Pursuant to Tex. Gov't. Code 551.071 (1)(A), Vernon, Supp. 1996; Dorsey, Rabinowitz, Morgan:

Discussion and a vote may be called for on all items under the following headings:

IV. Review and Approval of Past Minutes

V. Appearance before the Board: Reveley, Todd, Chambers

VI. Rules: Discuss, consider and vote on publication for comment proposed rules 103.3, 109.2, 109.107, 117.1, 119.3, 107.300, 109.109.

VII. Licensing and Examination: Discuss, consider and vote on Dr. George Morgan's application for licensure by credentials; sedation/anesthesia permits; Exam Committee report; Credentials Committee report; Discuss, consider and vote on applications for licensure by

credentials for dentists and dental hygienists, discuss, consider and vote on WREB bylaws

VIII.Enforcement: Discuss, consider and vote on settlement conference orders; Consider adoption of final order, SBDE vs Primo, Docket 504-93-896; Enforcement Committee report

IX.Administration: Discuss, consider and vote on agency Return to Work Program, Internal Operating budget, FY97, Organizational Chart, 1998-1999 LAR, Survey or Organizational Excellence, petty cash account approval for Jeffry Hill, transfer of Peer Assistance Fees.

X.President's Report: Discuss, consider and vote on ASDA's application for membership in DISC;

XI.Executive Director's Report

XII.General Counsel's Report

XIII.Public Comment

XIV.Announcements

XV.Adjourn

Contact: Mei Ling Clendennon, SBDE, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: September 16, 1996, 10:56 a.m.

TRD-9613544



Thursday, September 26, 1996, 10:00 a.m. until conclusion

333 Guadalupe, Tower 3, Suite 800, SBDE Offices

Austin

Enforcement Committee

AGENDA:

I. Call to Order

II. Roll Call

III. Review and Approval of Past Minutes

IV. Rules

A. Discuss and Consider Process for Proposing Rules to Develop Criteria Defining Licensees who check "YES" to Felony Conviction on their Application for Dental/Dental Hygiene Licensure in Texas.

B. Discuss and Consider Process for Proposing Rules to Develop Criteria Defining Re-Licensure of Licensees who have a Retired, Revoked, Suspended, or Canceled License.

C. Discuss and Consider Process for Proposing Rules to Develop Criteria Removing a Board Order From the SBDE VAX System.

D. Discuss and Consider Process to Restructure Present Levels of Investigation Priorities and Completion Time Frames for Investigations.

E. Discuss and Consider Process for Proposing Rules to Develop Criteria to Establish Guidelines for Reviewing Completed Investigative Cases.

F. Discuss and Consider Proposing Rule 107.300, Registration of Non-Profit Corporations Authorized to Hire Dentists, Pursuant to TEX.CIV.STAT.ANNO. art 4551(n), (Vernon, 1996).

G. Discuss and Consider Proposing Rule 109.109, Advertising of Non-ADA Approved Specialties.

H. Discuss and Consider Proposing a Rule to Define Prohibited Dental Functions for Dental Hygienists and Dental Assistants.

V. Public Comment

VI. Announcements

VII. Adjourn

Contact: Mei Ling Clendennon, SBDE, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: September 16, 1996, 10:58 a.m.

TRD-9613546

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Thursday, September 26, 1996, 3:00 p.m. until conclusion

333 Guadalupe, Tower 3, Suite 800, SBDE Offices

Austin

Credentials Review Committee

AGENDA:

I. Call to Order

II. Roll Call

III. Review and Approval of Past Minutes

IV. Review Dental Applications for Licensure by Credentials and make recommendations to the Board for approval or denial of said applications.

V. Review Dental Hygiene Applications for Licensure by Credentials and Make Recommendations to the board for Approval or Denial of Said Applications.

VI. Public Comments

VII. Announcements

VIII. Adjourn

Contact: Mei Ling Clendennon, SBDE, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: September 16, 1996, 10:57 a.m.

TRD-9613545

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Texas Education Agency

Friday, September 27, 1996, 9:00 a.m.

Energy Plaza, 1601 Bryan Street, Room 104, Mezzanine

Dallas

Texas Environmental Education Advisory Committee (TEEAC)
Teacher Standards Subcommittee

AGENDA:

The TEEAC subcommittee will plan TEEAC Sites Affiliate meeting, including setting agendas, organizing sessions, and resource fair. The TEEAC subcommittee will decide whether attendance should be mandatory and will design an evaluation form to measure success

of meeting. The TEEAC subcommittee will discuss the possible role of the TEEAC certificate in teacher certification.

Contact: Irene Pickhardt, TEA, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-9556.

Filed: September 17, 1996, 2:09 p.m.

TRD-9613614

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Texas Department of Health

Tuesday, September 24, 1996, 9:30 a.m.

Main Building, Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

Prostate Cancer Advisory Committee

AGENDA:

The Committee will meet to discuss and possibly act on: revision of the ground rules; approval of minutes and re-capping of issues from the July 10, 1996 meeting; presentation (overview of health issues in Texas demographics, and prostate cancer problem in Texas; legislative overview/process; counseling experiences; from a customer's perspective; advisory committee successes (Texas Diabetes Council); and urological issues and medical information); selection of chairperson/vice-chair; continuation of draw for terms; announcement (chair/vice chair); set agenda for next meeting; set dates for meeting(s) after December; and evaluation of meeting.

Contact: Betty Flores, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: September 16, 1996, 4:02 p.m.

TRD-9613564

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Tuesday, September 24, 1996, 2:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will meet in executive session to discuss the appointment, and duties of an Acting Commissioner of Health. The board will then meet in open session to discuss and act on: appointment of an Acting Commissioner of Health and/or the Chief Medical Executive; search for new Commissioner of Health; and announcements and comments.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: September 16, 1996, 4:02 p.m.

TRD-9613565

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Friday, September 27, 1996, 9:30 a.m.

Moreton Building, Room M-418, Texas Department of Health, 1100 West 49th Street

Austin

Kidney Health Care Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: election of Kidney Health Care Advisory Committee officers for the coming year; review of proposed repeal and new 25 TAC §§ 61.1–61.15 Kidney Health Care rules; consider proposed revisions to the reimbursable drug list (Prilosec and nutritional supplements); status of fiscal year 1998–1999 budget and benefits package; and public comment.

Contact: Juanita Waley, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7796. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least two days prior to the meeting.

Filed: September 17, 1996, 3:49 p.m.

TRD-9613622



Friday, September 27, 1996, 1:30 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Emergency Health Care Advisory Committee

AGENDA:

The meetings were originally scheduled for Friday, September 13, 1996 but have been rescheduled for Friday, September 27, 1996. There will be a Trauma Subcommittee meeting at 9:00 a.m., a Pediatric Subcommittee meeting at 10:00 a.m., and an Emergency Management Services (EMS) Subcommittee meeting at 11:00 a.m. The Emergency Health Care Advisory Committee will meet at 1:30 p.m. and will discuss and possibly act on: approval of minutes from the previous meeting; bureau chief's report; legislative report; trauma systems update; subcommittee/task force reports (Trauma Subcommittee, Pediatric Subcommittee, EMS Subcommittee, Public Education/Prevention Task Force; and EMS Funding Task Force); EMS recertification testing; (introduction of issue and open for public comment); review next meeting date; and open for public comment.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6700. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least two days prior to the meeting.

Filed: September 17, 1996, 3:49 p.m.

TRD-9613623



Texas Higher Education Coordinating Board

Thursday, October 3, 1996, 12:30 p.m.

Texas A&M University-Corpus Christi, Room 1003, Natural Resources Center

Corpus Christi

Campus Planning Committee

AGENDA:

Tour project sites and discuss the following projects as follows:

Texas A&M University-Corpus Christi — University Center, Second reading: Texas A&M University — Chilled Water Plant Addition-Cogeneration Administration Building; Texas A&M University-Kingsville — Nierman Hall renovation and addition; West Texas A&M University-Electronic Learning Center renovation.

Contact: Don Brown, Deputy Commissioner, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483–6101.

Filed: September 16, 1996, 10:58 p.m.

TRD-9613549



Commission on Jail Standards

Friday, September 27, 1996, 8:30 a.m.

300 West 15th Street, Committee Room 5, William P. Clements Building

Austin

Education Committee

AGENDA:

Review Staff's Training Efforts.

Contact: Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711, (512) 463–5505.

Filed: September 18, 1996, 9:01 a.m.

TRD-9613631



Friday, September 27, 1996, 9:00 a.m.

300 West 15th Street, Committee Room 5, William P. Clements Building

Austin

AGENDA:

Call to order. Roll Call of Commission members. Reading and approval of July 26, 1996 minutes. Old Business: Burnet County, Webb County, City of Taylor, Eden Detention Center. New Business: Brooks County, Hopkins County, Education Committee Report. Request for Variance: Kleberg County. Review of Variances: Bexar, Collin, Dallas, Galveston, Harris, Hopkins, Nueces, Tarrant, Taylor and Travis Counties. Staff Report: Changes to Standards- Adopt, Changes to Standards — Proposed, Assignment of New Assistant Attorney General to TCJS, Annual Financial Report, Selection of Juvenile Justice Contractor, Completed Jail Projects, Active Remedial Orders/Cancel/Changes, Sunset Advisory Commission Review, Status and Composition of Jail Population, Financial Report/Budget/Grants, Training. Other Business: Executive Session. Adjourn.

Contact: Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711, (512) 463–5505.

Filed: September 18, 1996, 9:00 a.m.

TRD-9613630

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Board of Law Examiners

Friday, September 27, 1996, 8:30 a.m.

205 West 14th Street, Suite 500, Tom C. Clark Building

Austin

Hearing Panel

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, including the consideration of proposed agreed orders, on the character and fitness of the following applicants, declarants and/or probationary licensee: James C. Jordan, Kenneth W. McGuire, S. Michael McCown, Ray C. Clark, Jr., Stephen J. Hyland, Jeanne M. Lempert, David I. Warwick, David M. Skala, Brandon T. Hudson, Norman A. Desmarais, Jr. (Character and fitness deliberations may be conducted in executive session, pursuant to Sec. 82.003(a), Texas Government Code.)

Contact: Rachael Martin, Executive Director, P.O. Box 13486, Austin, Texas 78711-3486.

Filed: September 17, 1996, 10:38 a.m.

TRD-9613597

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Texas Natural Resource Conservation Commission

Friday, September 20, 1996, 9:30 a.m.

12000 Park 35 Circle, IH35, Building F, Room 2210

Austin

Water Well Drillers Advisory Council

AGENDA/ EMERGENCY MEETING

The Texas Water Well Drillers Advisory Council will meet and discuss the following: approval of minutes of the July 26, 1996 meeting, elect officers for FY 1997; set the following for a formal hearing or take appropriate legal action against, Alan Dreyer, Dean Davenport, Alton Mesecke, Allen Rutherford, Steven Biffle, Billy David, Donald Davis, Ronald Davis, Fred Paskell; certify applicants for registration and driller-trainee; and staff reports.

REASON FOR EMERGENCY: The meeting was called by the Water Well Driller Advisory Council Chairman.

Contact: Rick Wilder, Occupational Certification Section, P.O. box 13087, Austin, Texas 78711-3087. (512) 239-0541.

Filed: September 17, 1996, 8:41 a.m.

TRD-9613543

Wednesday, September 25, 1996, 9:30 a.m. and 1:00 p.m.

12118 North IH35 Building E, Room 201S

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Agency Enforcement Reports; Hearing Request; District Matter; Emergency Order; Industrial Hazardous Waste En-

forcement; Contact; Resolution; Petroleum Storage Tank Enforcement; Rate Matter; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting, verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 17, 1996, 3:37 p.m.

TRD-9613620

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Thursday, September 26, 1996, 1:30 p.m.

12118 North IH35 Building E, Room 201S

Austin

AGENDA:

The meeting is a work session for discussion between Commissioners and staff. No Public testimony or comment will be accepted except by invitation of the Commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 17, 1996, 2:04 p.m.

TRD-9613607

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Wednesday, October 9, 1996, 10:00 a.m.

BFI Houston Resource Renewal Complex, 5757 Oates Road

Houston

AGENDA:

For an informal public meeting regarding the application of Browning-Ferris, Inc. (BFI Houston Resource Renewal Complex), Proposed Registration No. MSW40098, to authorize construction and operation of a Type V municipal solid waste transfer station and materials recovery facility. The proposed site covers about 51 acres of land, and is to be located at 5757 Oates road, about 2.5 miles east of Interstate Loop 610, off Old Beaumont Highway, (U.S. 90), in the City of Houston, Harris County, Texas.

Contact: Charles Stavley or Ann Scudday, TNRCC, P.O. Box 13087, Mail Code 176, Austin, Texas 78701, (512) 239-6688 or (512) 239-4756.

Filed: September 18, 1996, 9:32 a.m.

TRD-9613647

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Friday, October 11, 1996, 10:00 a.m.

12124 Park 35 Circle, IH35, Building F, Room 201A, (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by the CITY OF ROYSE CITY for a Certificate of Convenience and Necessity (CCN) to allow it to provide water utility service in Rockwall and Collin Counties, Texas. The proposed utility service area includes Royse City and areas generally west of downtown Royse City, Texas and is generally bounded on the west by the City of Fate, Nevada Water Supply Corporation (WSC)'s CCN and Lavon WSC's CCN; on the South by IH30, Royse City's southern city limits or Blackland WSC's CCN or Nevada WSC's CCN. The total area being requested includes approximately 1700 acres and 975 current customers. SOAH Docket No. 583-96-0143.

Contact: Melissa Medina, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.
Filed: September 17, 1996, 8:41 a.m.

TRD-9613592

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Texas Natural Resource Conservation Commission

Wednesday, September 25, 1996, 9:30 a.m. and 1:00 p.m.

12118 North IH35 Building E, Room 201S

Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Agency Enforcement Reports; Hearing Request; District Matter; Emergency Order; Industrial Hazardous Waste Enforcement; Contact; Resolution; Petroleum Storage Tank Enforcement; Rate Matter; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting, verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.
Filed: September 17, 1996, 3:37 p.m.

TRD-9613620

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Friday, September 20, 1996, 9:30 a.m.

12000 Park 35 Circle, IH35, Building F, Room 2210

Austin

Water Well Drillers Advisory Council

AGENDA/ EMERGENCY MEETING

The Texas Water Well Drillers Advisory Council will meet and discuss the following: approval of minutes of the July 26, 1996 meeting, elect officers for FY 1997; set the following for a formal hearing or take appropriate legal action against, Alan Dreyer, Dean Davenport, Alton Mesecke, Allen Rutherford, Steven Biffle, Billy

David, Donald Davis, Ronald Davis, Fred Paskell; certify applicants for registration and driller-trainee; and staff reports.

REASON FOR EMERGENCY: The meeting was called by the Water Well Driller Advisory Council Chairman.

Contact: Rick Wilder, Occupational Certification Section, P.O. box 13087, Austin, Texas 78711-3087. (512) 239-0541.

Filed: September 17, 1996, 8:41 a.m.

TRD-9613543

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Thursday, September 26, 1996, 1:30 p.m.

12118 North IH35 Building E, Room 201S

Austin

AGENDA:

The meeting is a work session for discussion between Commissioners and staff. No Public testimony or comment will be accepted except by invitation of the Commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 17, 1996, 2:04 p.m.

TRD-9613607

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Wednesday, October 9, 1996, 10:00 a.m.

BFI Houston Resource Renewal Complex, 5757 Oates Road

Houston

AGENDA:

For an informal public meeting regarding the application of Browning-Ferris, Inc. (BFI Houston Resource Renewal Complex), Proposed Registration No. MSW40098, to authorize construction and operation of a Type V municipal solid waste transfer station and materials recovery facility. The proposed site covers about 51 acres of land, and is to be located at 5757 Oates road, about 2.5 miles east of Interstate Loop 610, off Old Beaumont Highway, (U.S. 90), in the City of Houston, Harris County, Texas.

Contact: Charles Stavley or Ann Scudday, TNRCC, P.O. Box 13087, Mail Code 176, Austin, Texas 78701, (512) 239-6688 or (512) 239-4756.

Filed: September 18, 1996, 9:32 a.m.

TRD-9613647

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Friday, October 11, 1996, 10:00 a.m.

12124 Park 35 Circle, IH35, Building F, Room 201A, (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by the CITY OF ROYSE CITY for a Certificate of Convenience and Necessity (CCN) to allow it to provide water utility service in Rockwall and Collin Counties,

Texas. The proposed utility service area includes Royse City and areas generally west of downtown Royse City, Texas and is generally bounded on the west by the City of Fate, Nevada Water Supply Corporation (WSC)'s CCN and Lavon WSC's CCN; on the South by IH30, Royse City's southern city limits or Blackland WSC's CCN or Nevada WSC's CCN. The total area being requested includes approximately 1700 acres and 975 current customers. SOAH Docket No. 583-96-0143.

Contact: Melissa Medina, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.
Filed: September 17, 1996, 8:41 a.m.

TRD-9613592



Texas Board of Nursing Facility Administrators

Wednesday, September 25, and Thursday, September 26, 1996, 9:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: proposed rules concerning standards of practice (Code of Ethics) for Nursing Facility Administrators and other rules necessary to implement a plan of action.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.
Filed: September 17, 1996, 3:49 p.m.

TRD-9613621



Texas Board of Pardons and Paroles

Wednesday, September 25, 1996, 8:00 a.m.

Texas Law Center, 1414 Colorado Street, Room 104

Austin

Texas Board of Pardons and Paroles

AGENDA:

I. Regular Session

A. Recognition of Guests

B. Presentation by TDCJ-Parole Division

C. Presentation by TDCJ-Classification and Records Division

D. Consent Items

E. Board Committee Reports/Staff Reports

F. Final Adoption of Proposed Rules as Published in the August 6, 1996, Texas Register (21 TexReg 7359-7363)

G. Adoption of Proposed Amendment to 37 TAC §141 et seq.

H. Adoption of BPP.POL. 96-0.01. Vote of the Entire Membership

I. Adoption of BPP.POL. 96-9.02. A Policy Adopting a Mission Statement

II. Executive Session

A. Litigation

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Aline Guillot, P.O. Box 13401, Austin, Texas 78711, (512) 463-1702.

Filed: September 17, 1996, 9:09 a.m.

TRD-9613593



Public Utility Commission of Texas

Monday, October 28, 1996, 9:00 a.m.

1701 Congress Avenue

Austin

AGENDA:

An arbitration hearing will convene in Docket No. 16300- Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and GTE Southwest, Inc. and Contel of Texas, Inc. and Docket No. 16355- Petition of MCI Telecommunications Corporation and its Affiliates Including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with GTE Southwest, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: September 17, 1996, 2:09 p.m.

TRD-9613615



Railroad Commission of Texas

Tuesday, September 24, 1996, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room, 1-111

Austin

Committee or Board

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act,

Contact: Lindil C. Fowler, Jr., Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: September 16, 1996, 4:26 p.m.

TRD-9613584

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The Texas A & M University System

Friday, September 20, 1996, 1:30 p.m.

Board of Regents Meeting Room, Memorial Student Center

College Station

Board Bylaws Committee

AGENDA:

The purpose of this meeting is to discuss and adopt revisions to the Bylaws of the Board of Regents of The Texas A & M University System.

Contact: Vicki Running, Secretary of the Board of Regents, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: September 16, 1996, 2:32 p.m.

TRD-9613558

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University of Texas Health Science Center at San Antonio

Wednesday, September 25, 1996, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of Minutes
2. Protocols for Review (See Attached)
3. Subcommittee Reports
4. Other Business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822 (210) 567-3717)

Filed: September 16, 1996, 1:48 p.m.

TRD-9613555

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Texas Worker's Compensation Insurance Fund

Wednesday, September 25, 1996, 3:00 p.m.

221 West 6th Street, Suite 328

Austin

Board of Directors

AGENDA:

Call to Order; Roll Call; Review and Approval of the Minutes of the August 28, 1996, Board Meeting; Action Items: Financial Report; Fund Status Report; Informational Items; Report of the Administration Committee; Report of the Finance Committee; Report of the Operations Committee; Report of the Audit Committee; Public Participation; Executive Session; Action Items Resulting from Executive Session Deliberations; Announcements; Adjourn.

Contact: Jeannette Ward, 221 West 6th Street, Austin, Texas 78701, (512) 404-3999

Filed: September 17, 1996, 2:04 p.m.

TRD-9613608

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Regional Meetings

Meetings Filed September 16, 1996

Ark-Tex Council of Governments (ATCOG), Board, met at Court-house Annex, Morris County Courthouse, Daingerfield, September 19, 1996 at 5:30 p.m. Information may be obtained from Sandie Brown, Executive Assistant, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD 9613560.

Atascosa County Appraisal District, Appraisal Review Board, will meet at 4th and Avenue J, Poteet, September 25, 1996 at 9:00 a.m. Information may be obtained from Curtis Stewart, Chief Appraiser, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD 9613550.

Coryell City Water Supply District, Board of Directors, met at FM 929, Coryell City, September 19, 1996 at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD 9613554.

Edwards Aquifer Authority, Board, met at 1615 North St. Mary's Street, San Antonio, September 16, 1996 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9613561.

Liberty County Central Appraisal District will meet at 315 Main Street, Liberty, September 25, 1996 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD 9613569.

LRGV Development Council (LRGVDC), Board of Directors, will meet at Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, September 24, 1996 at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Executive Director or Anna Hernandez, Administrative Assistant, 311 North 15th Street, McAllen, Texas 78504-(210) 682-3481. TRD 9613559.

Johnson County Central Appraisal District, Board of Directors met at 109 North Main Street, Suite 201, Cleburne, September 19, 1996 at 4:30 p.m. Information may be obtained from Don Gilmore, 109 No. Main, Cleburne, Texas 76031, (817) 558-8100. TRD 9613563.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, September 23, 1996 at 10:00 a.m. Information may be obtained from J.W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD 9613557.

Meetings Filed September 17, 1996

Austin Travis County MHMR Center, Planning and Operations Committee, met at 1430 Collier Street, Board Room, Austin,

September 20, 1996 at 12:00 noon. Information may be obtained from Sharon Taylor, Executive Assistant, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD 9613601.

Burnet County Appraisal District, Board of Directors, will meet at 110 Avenue H, Suite 106, September 26, 1996 at 12:00. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD 9613600.

Central Counties Center for MHMR Services, Board of Trustees, will meet at First Bank Texas Conference Room, 101 East Henry, Hamilton, September 26, 1996 at 7:00 p.m. Information may be obtained from Eldon Tietje, Executive Director, 304 South 22nd Street, Temple, Texas, 76501, (817) 778-4841, extension 301. TRD 9613599.

Grand Parkway Association, Board of Directors, will meet at 5757 Woodway, 140 East Wing, Houston, on September 24, 1996 at 2:30 p.m. Information may be obtained from Richard J. Lindley, Jr. President, Grand Parkway Association, 5757 Woodway, 140 East Wing, Houston Texas 77057; Phone (713) 782-9330. TRD 9613616.

Houston-Galveston Area Council, Area Emissions Reduction Credit Organization (AERCO), met at 3555 Timmons Lane Conference Room A, Second Floor, Houston, September 20, 1996 at 8:30 a.m. Information may be obtained from Melanie Goldstone, H-GAC, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD 9613591.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization, will meet at TxDOT District Office, 600 West Expressway US 83, Pharr, September 24, 1996 at 7:00 p.m. Information may be obtained from Edward L. Molitor, MPO Transportation Planning Director, 311 N. 15th Street, McAllen, Texas 78501-4705, (210) 682-3481. TRD 9613602.

Northeast Texas Rural Rail Transportation District, Board, met at 100 Jefferson Street, Conference Room, Sulphur Springs, on September 20, 1996 at 2:00 p.m. Information may be obtained from Sue Ann

Harting, P.O. Box 306, Commerce, Texas 75428-0306, (903) 450-0140. TRD 9613604.

Sharon Water Supply Corporation, Board of Directors, met at the Office of Sharon Water Supply Corporation, Route 5, Winnsboro, September 23, 1996 at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD 9613595.

Southwest Milam Water Supply Corporation, Board, met at 114 East Cameron, Rockdale, September 23, 1996, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD 9613606.

Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, September 27, 1996 at 8:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD 9613603.

TML Group Benefits Risk Pool, Board of Trustees, met at Four Seasons Resort and Club, 4150 North MacArthur Boulevard, Irving, September 20, 1996 at 8:00 a.m. Information may be obtained from Gayle Gardner, TML Group Benefits Risk Pool, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, (512) 719-6521. TRD 9613624.

Meetings Filed September 18, 1996

Education Service Center, Region VII, Board of Directors, will meet at 440 Highway 79 South, Henderson, September 26, 1996 at 12:00 noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD 9613629.

TML Group Benefits Risk Pool, Board of Trustees, Emergency Revised Agenda #2, met at Four Seasons Resort and Club, 4150 North MacArthur Boulevard, Irving, September 20, 1996 at 8:00 a.m. Information may be obtained from Gayle Gardner, TML Group Benefits Risk Pool, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, (512) 719-6521. TRD 9613640.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Organic Standards and Certification Administrative Penalty Matrix

The Texas Department of Agriculture (the department) is republishing the following Organic Standards and Certification Administrative Penalty Matrix to inform the regulated public. The matrix was originally submitted for publication in the September 17, 1996, issue of the *Texas Register* and published at 21 TexReg 9003, but the matrix itself was omitted in that publication. This matrix has been developed to provide consistent, uniform, and fair penalties for violations of Chapter 18, Subchapter A, Texas Agriculture Code (the Code). The department's authority for the enforcement of Chapter 18 is found in the Code, §12.020, whereby the department may assess administrative penalties up to a maximum of \$500 for each violation. Each day that a violation continues or occurs may be considered a separate violation for purposes of assessing administrative penalties.

This matrix is based on current information. As the enforcement of these types of violations continues and additional data are gathered, the matrix will be reviewed and, if need be, adjusted to reflect any changes in the information upon which the current matrix is based. This matrix is effective immediately upon its publication in the *Texas Register*.

For each type of offense there is a penalty range for initial violations. The range increases for subsequent violations. The ranges were established by considering the criteria set forth in the Code, §12.020(d): (1) the seriousness of the violation, including but

not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public; (2) the damage to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require.

The Texas Legislature has given the department the responsibility for ensuring that producers, processors, distributors and retailers obtain proper certification in order to offer food, feed or fiber as organic and for ensuring the validation of the organic claim. Also, methods used for production, processing and handling of organic products must prevent the commingling of non-organic and organic products, or contamination of organic products from prohibited materials. In addition, processed or packaged food products must be properly labeled indicating proper certification and that the product is organic or contains organic ingredients. These factors will be considered on a case-by-case basis.

The low end of each range is the presumptive base penalty for each violation, and represents an appropriate penalty for violations which are considered "minor" with respect to the criteria in the Code, §12.020(d). Penalties may be increased to the maximum within each range as the department considers the facts of each violation in light of the criteria in the Code, §12.020(d). The penalty may be adjusted as justice may require.

176-Organic Standards and Certification Administrative Penalty Matrix - Figure 1

176-Organic Standards and Certification Administrative Penalty Matrix-Figure 1

OFFENSE		FIRST VIOLATION	SECOND VIOLATION	SUBSEQUENT VIOLATIONS
Operating without a valid certification		\$250 - \$350	\$350 - \$500	\$500
Misrepresentation of food, feed or fiber as organic	Marketing/advertising non-organic as organic	\$300 - \$400	\$400 - \$500*	\$500*
	Commingling with non-organic	\$125 - \$250	\$250 - \$500*	\$500*
	Contamination from prohibited materials	\$125 - \$250	\$250 - \$500*	\$500*
Mislabeled of processed or packaged organic products		\$125 - \$250	\$250 - \$500*	\$500*
Violation of a stop-sale order		\$500	\$500*	\$500*

The base penalty set forth in the table will be assessed for each of these violations, but may be adjusted as justice requires

* A subsequent violation may also result in revocation of certification for a period prescribed by the department.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613642

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: September 18, 1996

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Office of the Consumer Credit Commissioner

Notice of Rate Ceiling

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	09/23/96-09/29/96	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	10/01/96-10/31/96	10.00%	10.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on September 17, 1996.

TRD-9613646

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 17, 1996

Edwards Aquifer Authority

Public Hearing

The Edwards Aquifer Authority will conduct two public hearings to receive comments on proposed rules governing the filing and processing of applications for permits to withdraw water from the Edwards Aquifer. These public hearings will be held at the following times and locations:

September 25, 1996, at 7:00 p.m.

Medina County Court House

District Court Room, 2nd Floor

1100 16th Street Hondo, Medina County, Texas

September 26, 1996, at 7:00 p.m.

Edwards Aquifer Authority

1615 North St. Marys

San Antonio, Bexar County, Texas

The proposed rules for filing and processing applications for permits to withdraw water from the Edwards Aquifer may be found in the September 3rd issue of the *Texas Register* or may be obtained from the Edwards Aquifer Authority by calling (210) 222-2204 or may be viewed on the Authority's web site at the following address: <http://www.txdirect.net/corp/ea>

Issued in Austin, Texas, on September 17, 1996.

TRD-9613626

Rick Illgner

General Manager

Edwards Aquifer Authority

Filed: September 17, 1996

Texas Health and Human Services Commission

Notices of Award

The Texas Health and Human Services Commission (HHSC) has selected a proposal for award of a "Local Transportation Coordination Model" grant. A notice of the request for proposals was published in the May 31, 1996, issue of the *Texas Register* (21 TexReg 4910).

The apparent successful proposer is the LULAC Project Amistad, 4001 Durazno, El Paso, Texas 79905, which was recommended for an award in the border category of up to \$30,000 for the first year of the grant and \$65,625 for years two through four of the project for a total of up to \$95,625. The model developed will help the community provide local transportation coordination that maximizes the use of local resources, demonstrates local commitment to the development of coordinated transportation services and increases the availability of options, supports and services to all individuals including those with disabilities. Continuation funding for years two through four will be contingent upon annual review of performance and the availability of state and/or federal funds. The initial budget period is October 1, 1996 to May 31, 1997.

For more information, please contact Tina Janek, Project Director, Office of Client Transportation Services, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247, (512) 424-6581, FAX (512) 424-6590.

Issued in Austin, Texas, on September 17, 1996.

TRD-9613609

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: September 17, 1996

The Texas Health and Human Services Commission (HHSC) has selected an alternate proposal for award of a "Local Transportation Coordination Model" grant for a metropolitan area. A notice of award was published in the April 19, 1996, issue of the *Texas Register* (21 TexReg 3464). HHSC was unable to complete contract negotiations with the apparent successful proposer in the metropolitan category and has since entered into negotiations with the next highest ranking proposer in the project category.

The next highest ranking proposer in the metropolitan category is The American Red Cross Greater Houston Area, 2700 SW Freeway, Houston, Texas 77001. HHSC has successfully negotiated a contract with this proposer and shall award up to \$30,000 for the first year of the grant and \$65,625 for years two through four of the project for a total of up to \$95,625. The model developed will help the community provide local transportation coordination that maximizes the use of local resources, demonstrates local commitment to the development of coordinated transportation services and increases the availability of options, supports and services to all individuals including those with disabilities. Continuation funding for years two through four will be contingent upon annual review of performance and the availability of state and/or federal funds. The initial budget period is August 1, 1996 to May 31, 1997.

For more information, please contact Tina Janek, Project Director, Office of Client Transportation Services, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247, (512) 424-6581, FAX (512) 424-6590.

Issued in Austin, Texas, on September 17, 1996.

TRD-9613610
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: September 17, 1996

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Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will hold a public hearing on Medicaid Managed Care on Friday, October 4, 1:30-3:30 p.m., at the Texas Department of Health, Auditorium, 1100 West 49th Street, Austin, Texas.

HHSC will provide a summary of public comments received at the 20 Medicaid Managed Care public hearings held statewide from May 15-July 18, 1996. Also, a draft implementation schedule for the 1915(b) statewide rollout of Medicaid Managed Care will be announced.

Give your comments on the rollout schedule for Medicaid Managed Care.

For more information, please contact Jill Melton, State Medicaid Division with HHSC, at (512) 424-6612. Persons with disabilities who may require special assistance may contact Ms. Melton.

Issued in Austin, Texas, on September 17, 1996.

TRD-9613617
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: September 17, 1996

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Texas Department of Housing and Community Affairs Manufactured Housing Division

Notices of Administrative Hearing

Wednesday, September 25, 1996, 3:00 p.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. A & M Mobile Home Service to hear alleged violations of Texas Manufactured Housing Standards Act, Texas Revised Statute Annotated Article 5221f (Vernon 1995), regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-96-1454. Department MHD1996001226D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613627
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs Manufactured Housing Division
Filed: September 18, 1996

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Wednesday, September 25, 1996, 4:00 p.m.

State Office of Administrative Hearing, 300 West 15th Street, Suite 502

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Chet's Mobile Homes to hear alleged violations of Texas Manufactured Housing Standards Act, Texas Revised Statute Annotated Article 5221f (Vernon 1995), regarding obtaining, maintaining or possessing a valid certificate of registration. SOAH 332-96-1095. Department MHD1995000571T.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613628
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs Manufactured Housing Division
Filed: September 18, 1996

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Texas Department of Insurance

Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property & Casualty Insurance Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TX. INS. CODE ANN. art. 5.101, §3(g). They are proposing rate ranging from +5% to +85% above the benchmark by class, coverage and territory for private passenger automobile.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Actuary for P&C, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613650

Caroline Scott
General Counsel & Chief Clerk
Texas Department of Insurance
Filed: September 18, 1996



The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan General Insurance Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TX. INS. CODE ANN. art. 5.101, §3(g). They are proposing rate ranging from +30% to +85% above the benchmark by class, coverage and territory for private passenger automobile.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Actuary for P&C, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613651

Caroline Scott
General Counsel & Chief Clerk
Texas Department of Insurance
Filed: September 18, 1996



The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Greenwich Insurance Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TX. INS. CODE ANN. art. 5.101, §3(g). They are proposing a rate of -81% below the benchmark for comprehensive and -79% below the benchmark for collision for private passenger automobile, Class Code 9620, antique autos.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Actuary for P&C, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613656

Caroline Scott
General Counsel & Chief Clerk
Texas Department of Insurance
Filed: September 18, 1996



Legislative Budget Board and Governor's Office of Budget and Planning

Schedule for Joint Budget Hearings (for the period of September 30–October 4, 1996) on Appropriations Requests for the 1998–1999 Biennium

State Securities Board, September 30, 3:30 p.m., Room E2.030, Capitol Extension, State Capitol Complex, Austin, Texas.

Texas Department of Transportation, October 2, 9:30 a.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin, Texas.

Issued in Austin, Texas, on September 17, 1996.

TRD–9613605

Judith S. King
Analyst
Legislative Budget Board and Governor's Office of Budget and Planning
Filed: September 17, 1996



Texas Natural Resource Conservation Commission

Public Hearing Notice

Notice is hereby given that pursuant to the requirements of §§26.011, 26.024, and 26.025 of the Texas Water Code, Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993) and 40 Code of Federal Regulations, §25.5, of the United States Environmental Protection Agency regulations concerning Public Hearings, the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony concerning amendments to Chapter 307, relating to Texas Surface Water Quality Standards.

The commission proposes amendments to §307.4 and §307.10, concerning surface water quality standards. The commission proposes to change the presumed standard for unclassified perennial streams in East Texas from "intermediate aquatic life" to "high aquatic life" in §307.4(h)(1), and to designate site-specific standards for additional streams in Appendix D of §307.10.

Public hearings on the proposal will be held in Tyler on November 20, 1996 at 7:00 p.m., in the City Council Chambers, Second Floor of

the City Hall, 210 North Bonner, Tyler; and in Austin on November 18, 1996 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Office Complex, Room 201S, Building E, 12015 North Interstate 35, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should refer to Rule Log Number 96138-307-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission of the written comments. Written comments must be received by 5:00 p.m. on December 2, 1996. For further information concerning this proposal, please contact Charles Bayer MC-150, Water Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4583.

Complete copies of the proposed Chapter 307 rule amendments will be available for mailout by October 7, 1996. Copies will be available for view in the Regional offices and the TNRCC library in Austin, Texas. Requests for copies of the proposed rule amendments should be sent to Becky Ledesma, MC-150, Water Planning and Assessment Division, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4531.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613648

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: September 18, 1996

Texas Parks and Wildlife Department

Notice of Public Meeting-Gulf States Marine Fisheries Commission

The Gulf States Marine Fisheries Commission will hold its 47th Annual Meeting October 14-18, 1996. Louisiana is the host state and arrangements have been made to convene at the Holiday Inn Crowne Plaza, 333 Poydoras Street, New Orleans, Louisiana (504) 525-9444. All persons interested in the Gulf States Marine Fisheries Commission are invited to attend. For additional information please call Virginia K. Herring (601) 875-5912.

Issued in Austin, Texas, on September 16, 1996.

TRD-9613582

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: September 16, 1996

Public Utility Commission of Texas

Notice of Requests for Arbitration to Establish Interconnection Agreements

Notice is given to the public of filing with the Public Utility Commission of Texas applications requesting compulsory arbitration to establish interconnection agreements pursuant to §242(b) of the Federal Telecommunications Act of 1996.

Docket Titles and Numbers: Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and GTE Southwest, Inc. and Contel of Texas, Inc., Docket Number 16300; Petition of MCI Telecommunications Corporation and its Affiliates Including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with GTE Southwest, Inc., Docket Number 16355.

The Applications: These dockets shall be consolidated for purposes of hearing. An Arbitration Hearing will be held on Monday, October 28, 1996, at 9:00 a.m. at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. Interested persons may provide a statement of position and/or provide a list of questions to be addressed in these arbitration proceedings. These statements may address the recent Federal Communication Commission's (FCC's) First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Number 96-98, FCC 96-325 (rel. August 8, 1996) (First Report and Order).

Statements and/or lists of questions on the Arbitration Hearing may be submitted to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, on or before October 16, 1996. Effective September 27, 1996, the Commission will relocate to 1701 North Congress Avenue, the mailing address will be P. O. Box 13326, Austin, Texas 78711-3326. Statements (32 copies) should refer to consolidated Docket Numbers 16300 and 16355.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613639

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: September 18, 1996

Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the closure of 33 mine openings at the Mariposa (Phase 1) Abandoned Mine Land (AML) site. The site is located 4.3 miles west of Terlingua, Texas in Brewster County.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A., §§1201 et seq), the commission will award a lump sum, fixed price contract

to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m., November 6, 1996, at which time the bids will be publicly opened and read at the address listed as follows. A mandatory pre-bid conference will be held at the site at 10:00 a.m., October 22, 1996.

Construction work item will include:

- 1) Mobilization
- 2) (10) Bat Gates
- 3) (3) Steel Grated Shaft Closures
- 4) (7) Corrugated Steel Pipe and Angle Steel Closures with Steel Grating
- 5) (4) Cable Net Closures
- 6) (2) Cast in Place Concrete Closures
- 7) (7) Backfill Closures

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the mailing address: Marisposa (Phase 1) AML Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P.O. Box 12967; Austin, Texas 78711-2967; Attention: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5:00 p.m., October 29, 1996. For further information contact Mark Rhodes at (512) 305-8834.

Issued in Austin, Texas, on September 12, 1996.

TRD-9613613

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Filed: September 17 1996



Telecommunications Infrastructure Fund

Extension of Deadline

The Telecommunications Infrastructure Fund announced in the July 16, 1996, issue of the *Texas Register* (21 TexReg 6735) the availability of approximately \$25 million through a competitive grant process to provide Internet access to Texas secondary schools. The deadline for receipt of proposals has been EXTENDED to November 15, 1996. All applications must be received by 4:45 p.m. CST on that date. This closing date and procedures guaranteeing timely submission will be strictly observed.

For additional information concerning this Request for Proposals, please refer to the previous announcement in the July 16, 1996, issue of the *Texas Register* (21 TexReg 6735).

Copies of the Request for Proposal and Application Packet may be obtained in any of the following manners: by sending a regular or certified letter, telefax, or express/overnight letter requesting a copy to: Karen Zimmerman, TIF, 221 East 11th Street, Suite 103, Austin, Texas 78701, or an e-mail message to: tifb@governor.texas.gov. Telefax: (512) 936-2681. Copies of the TIF's Internet homepage: <http://www.state.tx.us/tif>.

Issued in Austin, Texas, on September 17, 1996.

TRD-9613619

Arnold Viramontes

Executive Director

Telecommunications Infrastructure Fund

Filed: September 17, 1996



Texas Department of Transportation

Request for Proposals

Notice of Invitation: The Houston District of the Texas Department of Transportation (TxDOT) intends to enter eight contracts with professional engineers, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. To qualify for contract award a selected engineer must perform a minimum of 30% of the actual contract work.

RFP Number 12-6RFP5004 and RFP Number 12-6RFP5005: For engagement of services of Professional Engineering Firms as Prime Providers to provide Design Engineering Services for the Houston District. RFP Number 12-6RFP5004 is for the award of three work authorization-type contracts for the preparation of hydrologic and hydraulic reports and drainage studies. RFP Number 12-6RFP5005 is for the award of five work authorization-type contracts for the preparation of plans, specifications and estimates, which would include bridge design and preparation of structural details as the primary scope of services. The work will be performed in Harris, Fort Bend, Galveston, Brazoria, Waller and Montgomery Counties. All responding firms will be ranked in accordance with their responses to the detailed selection criteria presented in the official Request for Proposals.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal for either RFP Number 12-6RFP5004 or RFP Number 12-6RFP5005 will be accepted by fax at (713) 802-5640, or by hand delivery to TxDOT, Houston District Office, Attention: Mr. Mark W. Litzmann, P.E., 7721 Washington Avenue, Houston, Texas, or by mail delivery addressed to P.O. Box 1386, Houston, Texas 77251-1386. Letters of interest will be received until 5:00 p.m. on Friday, October 4, 1996. The letter of interest must include the engineer's firm name, address, telephone number, fax number, name of engineer's contact person and refer to RFP Number 12-6RFP5004 or RFP Number 12-6RFP5005. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required in order to receive a Request for Proposal packet. The provider should specify which RFP packet they are requesting RFP Number 12-6RFP5004, RFP Number 12-6RFP5005 or both. TxDOT will not issue Request for Proposal packets without receipt of letter of interest.)

Proposal Submittal Deadline: Proposals for RFP Number 12-6RFP5004 and RFP Number 12-6RFP5005 will be accepted until 5:00 p.m. on Friday, November 1, 1996, at the TxDOT, Houston District Office mentioned addresses.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Messrs. Mark D. Patterson, P.E., Mark W. Litzmann, P.E. or Michael H. Garrison, P.E., at (713) 802-5506, 5513, or 5799, respectively, or fax (713) 802-5640.

Issued in Austin, Texas on September 18, 1996.

TRD-9613649
Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: September 18, 1996



Texas Register

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